



# The Regenesis Report



Portland Edition

Innovative Homeowner Association Management Strategies

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**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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## 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 to smite the offender. This approach, however, also applies to everyone including the occasional offender and guest. The towing policy is not necessarily a bad one but needs to be approached with reason.

As a rule, rules need to be widely applicable. They should never be enacted to control the few. The few, frankly, often could care less about rules. When a narrow rule is enacted, the many that 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 money collections and an habitual slow payer. The board may react and enact an iron clad collection policy punctuated by a foreclosure option. The manifestation of this recency thinking again affects all members, including those that have a legitimate excuse for their delinquency (job loss, disability, etc.). The board needs to be very careful in "one size fits all" rules and policies.

Consider reacting to a guest member's bullying at a board meeting. One of the great advantages of an advance meeting agenda 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 advance meeting agenda to receive board action, impromptu meeting tirades and demands can be deflected to a future board meeting. In other words, the board is never obligated to react to a tirade or demand unless it wants to. 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 decisions. While the best approach is to try to ignore such undermining, it's also good to confront the perpetrator 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 wounds all heels. If a meeting discussion takes on a personal tone (like, "You worthless %#@%#!"), 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 and policies, shake them off and sloooooow doooooown. 🐢

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## Ask the HOA Expert™

**Q** We have a owner that rents out his unit but drops by every week to use the HOA's dumpster to empty his garbage.

**A** If an owner rents his unit, his use privileges are transferred to his renters. So, this landlord should be advised in writing not to use the HOA's services further. A similar situation arises when a landlord owner shows up to use the HOA's pool or clubhouse. If he is either a landlord or not a guest of a resident, he is not entitled to use HOA services or amenities.

**Q** What can be done about a board president lying to the board about legal opinions obtained from the HOA's lawyer?

**A** All board members are entitled to see legal opinions generated for the HOA and, indeed, should always review them before making decisions that concern that legal opinion. If the president withheld this information when requested, the board should take issue with him. Board officers serve at the pleasure of the board majority. If the president is disseminating false or misleading information, the board majority can remove him from office and appoint another director.

**Q** Our board recently presented the coming year's budget at the annual meeting. A number of members said the increase was too high for them and that they couldn't afford it. A couple of others chimed in with the same tune. The board president reacted by caving in. Without first consulting with the rest of the board, he stated the proposed increase would be reduced by half! Now we don't have enough money to properly fund operating and reserves. How can this have been avoided?

**A** There are several ways this could have been handled differently. Other board members could have challenged the president for promising something

beyond his authority (like reducing the budget). This would have been embarrassing but not out of line considering the consequences of his unilateral action.

The other more political approach would be to respond to the complainers that "the board would take their comments under consideration at the next board meeting". This removes a volatile topic from the meeting but doesn't dismiss the concerns expressed.

The third and best response is to patiently explain why the HOA needs this budget to properly care for the common elements. Proper maintenance of the common elements has a direct affect on individual member home values. Failing to maintain properly will cause values to fall and may make selling and refinancing more difficult. One way or another, the consequences good or bad will cost the members money. Wouldn't they rather pay for good consequences?

Now as to the president problem. Board presidents do have certain authority but not to reverse a board action or vote. This person needs to be reminded that the mark of an effective leader is that they do not buckle under pressure.

**Q** Our board uses Roberts Rules of Order to conduct our meetings and discussion is limited to board member deliberations with no comments allowed from guests. Some members have asked us to reconsider and to allow open comments from the audience. Is this a good way to go?

**A** Board meetings are meetings of and for the board, not the general members. Once the board meeting is called to order, guests should be advised that they are there to listen only. The chair can make an exception to this rule during the meeting if there is a good reason to do so, such as asking a particular guest with special knowledge for comment. But this exception should be used sparingly or it will be perceived to be an invitation for other guests to jump in.

**Q** We have a homeowner who likes to tell the board how to take care of business. He now wants a board member to represent him, read his statements at the meeting and have them incorporated into the minutes if he is unable to attend the meeting.

**A** If he has something to say, he should attend the meetings and given an opportunity to comment during an Open Forum designed for such a purpose. But what he has to say is not appropriate for the meeting minutes. Minutes should reflect *board business decisions*, not Open Forum discussions or opinions.

**Q** Our board wants to send a registered letter to all owners requesting a vote to approve a special assessment. The letter will state that failure to respond will be considered a "yes" vote. Is this proper?

**A** No response to the letter is not a vote one way or another. The board cannot interpret no response as approval. It must get the required number or percentage

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of yes votes to pass the special assessment.

**Q** Our HOA restricts the number of occupants to a maximum of four per unit. One of the units now has five occupants. How can the board enforce occupancy requirements?

**A** The HOA or board generally does not have the authority to restrict occupancy numbers. Unit interiors belong to the unit owners and it's up to them to decide how many occupants is reasonable. Most landlords would not allow more occupants than reasonable because of wear and tear.

There is also the Fair Housing Act to consider. Restricting the number of occupants might be construed to discriminate against families. The basis for restricting numbers must be reasonable and consistently applied or the HOA runs the risk of getting sued by the government.

However, if additional occupants are burdening limited parking or significantly increasing the load on HOA provided services (like trash) or utilities (like water and sewer), the board can take issue since the occupancy level is impacting the common elements and costs. 🏡

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## Discrimination Claims

It's a bright spring morning and the real estate market is beginning to thaw from its long winter chill. Spring buyers are out including Polly Purchaser who is looking to move her family into a homeowner association. While looking around, Polly asks a board member what the community is like. The board member responds, "It is a great neighborhood, very quiet. Not too many kids though."

**The Regenesi.s Report**

Polly moves on and looks at the HOA next door. While speaking to the board president, he states that the community is a great area and very quiet because owners are encouraged not to sell to families with kids.

While the comments from the first board member are fine, the comments by the second expose that HOA to claims of discrimination. The federal Fair Housing Act establishes a number of protected classes that a homeowner association may not discriminate against including familial status, race, age, sex, religion, national origin and disability. Individual states may have additional categories to consider.

Even if an HOA does not have a formal policy to discriminate, it may be subject to a discrimination claim based upon comments of the board, a committee or members with apparent authority to govern the HOA.

The Fair Housing Act not only applies to the formal actions of the board, but also to the informal actions. Any actions that have a discriminatory affect on a protected class could result in liability exposure. In the examples, each board member was merely describing the neighborhood; however, one board described a policy to discourage sales to families with children.

In the court case *United States v. Latvian Tower Condominium Association, Inc.*, an HOA was required to pay \$112,500 to a victim of familial discrimination and an additional fine of \$15,000 as a civil penalty for the systematic efforts to prevent sales to families with children. Discrimination claims are not taken lightly and can result in severe penalties.

A homeowner association must treat all owners and prospective owners the same in both written policies as well as in board actions. Treating a member of a protected class differently than others could result in a heavy price to pay.

*by David A. Firmin, Esq. 🏡*

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## Heavenly Tenants

The phrase "absentee landlord" in a homeowner association context conjures up images of the "tenant from hell" and an owner who could care less. However, generally speaking, both the landlord and tenant want the highest and best returns on their investments. What benefits the homeowner association will also benefit them.

The board can take some steps that will help assure a more successful tenancy. For one, it is reasonable to want tenants and landlords to comply with the rules. Of course, the tenant has to know what they are in order to do that. Remind the landlord that the tenant is bound by the same rules as owners and require that the HOA rules are part of every Rental Agreement. It's up to the landlord to comply and failure to do so can be a fineable violation *against the landlord*. Include renters with other residents who receive information about the rules.

Landlords should be required to provide the board with:

- ☞ Name of the tenant and contact information.
- ☞ Vehicle(s) information (make, model, plate number).
- ☞ Copy of the Rental Agreement that references the HOA rules as a condition of the agreement. (This is very important because it places the burden on the landlord to advise the tenant of rules and shows that the tenant received that information.

While the HOA cannot require it, common sense and good management practice indicate that landlords should also:



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"Trade HOA Stress For Success should be required reading for all HOA board members. I plan to make sure that a copy of it is distributed to all new members!"

*George Burns - Board President*

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☞ Perform credit checks on prospective tenants.

☞ Check several previous landlord references (HINT: The most recent landlord may have a vested interest in getting this tenant out.)

☞ Have read and understand the state's landlord-tenant laws, and

☞ Identify all occupants in the lease by name to avoid "musical" tenants.

While the landlord is the key to properly framing a tenant's role within the HOA, it's also important that the board, manager and owners refrain from treating tenants like second-class citizens. When treated with respect and like owner members of the community, they usually act the part by taking care of the property and respecting the neighbors. Treat renters like owners and reap tenants from heaven. 🌿

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## No Barking Zone

When neighbors live in close proximity like in a homeowner association, they are bound to step on each other's toes from time to time. Loud parties come to mind. And, oh yes, that dog that barks incessantly from morning to night. When the offending dog owner is confronted, the standard response is, "MY dog doesn't bark." As the saying goes, "If a dog barks in the forest and there is no one there to hear him, is he still a bad dog?" This is one immutable law of nature: ALL dogs bark when their owners are away.

Whether in a single family homeowner association or a common wall community with paper thin walls, barking dogs are a common complaint that come to lie at the board's or manager's door. When they do, decisive action is called for. Traditional solutions include bark

collars which shock the dog, prong collars to restraint aggression or total removal of the dog from the HOA.

Does your HOA have barking problems? Don't roll-over for half-barked solutions. Sit up and bite into a real solution. Create a No Barking Zone. Good boy/girl! 🐕

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## Managing Solo

Whether due to rugged individualism, frugality or lack of viable alternatives, most homeowner associations are self-managed. One might suspect that most self-directed HOAs are small or lacking in common area amenities. Actually, many are quite large, complex and the kind that would typically have professional management. What caused them to go solo and what are some of the dynamics of self management?

According to **The Owner's and Manager's Guide to Condominium Management** "For self-management to be successful, unit owners must have plenty of time and experience, and a professional attitude toward their work for the association. For example, the treasurer must understand accounting and be willing to devote a significant amount of time to the maintenance of proper financial records and timely collections. The chair of the landscape committee should have gardening experience so that either a landscape contractor or a gardener can be properly supervised. If the association is fortunate enough to have members who have the three main attributes--talent, time and concern--self-management may be the best choice."

Size of the development is an important factor. Although it should not be the ultimate factor in deciding to self-manage, a sound case can be made for

limiting self-management to HOAs of fewer than 30 units with limited common area space and no recreational facilities. The larger HOAs have more work. Most volunteers don't want or need another job, particularly an unpaid one.

The main advantage of self-management is cost. However, if the motivation for adopting self-management is purely economic, the board should consider that decision closely. It makes little sense to save each owner a few dollars a month in management fees when the value of their property many decrease by thousands of dollars as a result of mismanagement.

Equally important is the question of who directs contractors, employees and volunteers. Supervision cannot come from an owner who simply wants to be the boss. Supervision should come only from a person with time and experience to oversee and control work performance properly.

The board must consider the legal implications of self-management, since the board itself is liable for its decisions or indecision. The board's responsibility is to both fellow owners and the general public. Although many governing documents contain a hold harmless clause that seeks to protect board members from legal repercussions for their actions, this does not prevent their being sued for mismanagement.

If the members consider self-management to be an adventure, enthusiasm may be high enough to be successful. However, that initial enthusiasm usually wanes as the demands on volunteers increase. A breakdown in the volunteer system spells disaster for continuity. Today's "house-afire" is tomorrow's "burn-out".

Consider the two really nasty aspects of self-management: having to enforce rules on or collect past due money from neighbors. Suddenly, the neighbor relationship becomes a master-servant



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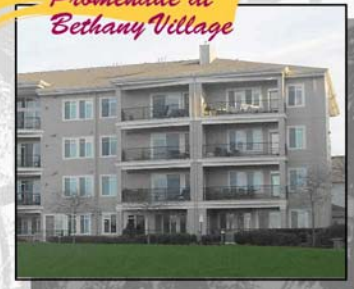
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relationship and neither party enjoys the new role it must play.

Controlling one's own destiny in a homeowner association is a sea fraught with storms. Under the right set of circumstances, self-management can work. As long as the approach is professional and business-like with a positive, affirming attitude, it can click. If it isn't clicking, consider the alternatives that professionals can offer. 🗺️

## Share the Love

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## Pool School

The climate in many northern states offers limited access to outdoor pool facilities, generally from Memorial Day through Labor Day. Without the proper precautions and safety measures in place, swimming pools can be hazardous for both adults and children.

Many elements such as weather, temperature, rain, sunshine, oils, lotions, sweat and urine, etc., have an influence on water clarity and purity. It is important that regular inspections of the water and mechanical equipment be performed and recorded on a log in compliance with local or state requirements. A regular review of the maintenance and chemical treatment logs, combined with needed preventive maintenance adjustments, will assure a season of uninterrupted fun and enjoyment.

### Pool Facts and Statistics:

75% of drowning victims studied by the Consumer Product Safety Council were between 1 and 2 years old; 65% of this group were boys.

Drowning incidents involving children happen quickly. A child can drown in the time it takes to answer a telephone. 75% of the victims had been missing for less than five minutes.

Child drowning is a silent death; there is rarely splashing to alert anyone that there is trouble.

Survival for a child or an adult depends on rescuing quickly and restarting the breathing process; seconds count in preventing death or brain damage.

### Pool Safety:

- There is no substitute for adequate supervision. The "buddy system" is always a good practice. Even good swimmers can drown if they bump their head, become entrapped, or have a medical emergency.
- Pools are an "attractive nuisance" and most state and local statutes require, at minimum, a four foot fence with a self closing and lock mechanism on the gate.
- State mandated pool rules must be prominently displayed. Additional rules and regulations can be board approved.
- Rescue equipment should be readily accessible and include a ring buoy, life hook and backboard. First aid kits should be visible and nearby.
- Alcohol consumption should be carefully controlled or prohibited in the pool area.

### Pool Chemical Storage:

- Store in a cool, dry, well ventilated area that is kept locked. Do not leave chemicals sitting in the sun or in an enclosed area in which heat builds up.
- Keep chemicals separate from each other and from other chemicals. Violent reactions such as explosions, fire or noxious gas production can occur. Never mix chemicals together.
- Do not stack chemicals containers on top of each other.
- Always replace lids and caps immediately and firmly after each use.
- Post Material Safety Data Sheets (MSDS) data and emergency information and telephone numbers near by.

- Never allow smoking around the chemicals; fire or explosion could result.

Pools are a great way to socialize with neighbors and friends. Properly maintained and controlled pools can offer many hours of fun and games. Get schooled on pools and enjoy! 🗺️

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Your friend is your needs answered. He is your field which you sow with love and reap with thanksgiving. And he is your board and your fireside. For you come to him with your hunger, and you seek him for peace.

When your friend speaks his mind you fear not the 'nay' in your own mind, nor do you withhold the 'aye.' And when he is silent your heart ceases not to listen to his heart; For without words, in friendship, all thoughts, all desires, all expectations are born and shared, with joy that is unacclaimed.

When you part from your friend, you grieve not; For that which you love most in him may be clearer in his absence, as the mountain to the climber is clearer from the plain.

And let there be no purpose in friendship save the deepening of the spirit. For love that seeks aught but the disclosure of its own mystery is not love but a net cast forth: and only the unprofitable is caught.

And let your best be for your friend. If he must know the ebb of your tide, let him know its flood also. For what is your friend that you should seek him with hours to kill? Seek him always with hours to live. For it is his to fill your need, but not your emptiness.



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*From The Prophet by Khalil Gibran* ☼

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## A Bucket of Shrimp

It happened almost every Friday evening when the sun was starting to dip into the blue ocean. Old Ed came strolling along the beach to his favorite pier. Clutched in his bony hand was a bucket of shrimp.

Up in the sky, white dots come screeching and squawking, winging their way toward the pier. Before long, dozens of seagulls have enveloped him, their wings fluttering and flapping wildly. Ed stands there tossing shrimp to the hungry birds. As he does, you can hear him say with a smile, "Thank you. Thank you." In a few short minutes the bucket is empty. But Ed doesn't leave.

Invariably, one of the gulls lands on his sea-bleached, weather-beaten hat - an old military hat he's been wearing for years. When he finally turns around and begins to walk back toward the beach, a few of the birds hop along the pier with him until he gets to the stairs, and then they, too, fly away. And Ed quietly makes his way home.

If you were sitting there on the pier with your fishing line in the water, Ed might seem like "a guy that's a sandwich short of a picnic". To onlookers, he's just another old codger lost in his own world. But Ed was engaged in a ritual. Rituals can seem unimportant or even a lot of nonsense. But Old Ed's ritual is one folks should know about.

Eddie Rickenbacker was a World War II hero. On one of his flying missions across the Pacific, he and his seven member crew went down.

Miraculously, all of the men survived and climbed into a life raft.

Captain Rickenbacker and his crew floated for days on the rough waters of the Pacific. They fought the sun. They fought sharks. Most of all, they fought hunger. By the eighth day their rations ran out. No food. No water. They were hundreds of miles from land and no one knew where they were.

They needed a miracle. That afternoon they prayed for a miracle. They tried to nap. Eddie leaned back and pulled his military cap over his nose. Time dragged. All he could hear was the slap of the waves against the raft.

Suddenly, Eddie felt something land on the top of his cap. It was a seagull! Eddie sat perfectly still. With a flash of his hand and a squawk from the gull, he grabbed it! The gull made a very small meal for eight men but they used what was left over for bait to catch fish, which gave them food and more bait. The cycle continued. They were able to endure the rigors of the sea until they were found and rescued after 24 days at sea.

Eddie Rickenbacker lived many years beyond that ordeal, but he never forgot the sacrifice of that first lifesaving seagull. He never stopped saying "Thank you". That is why almost every Friday night he would walk to the end of the pier with a bucket of shrimp and a heart full of gratitude.

*From In The Eye of the Storm by Max Lucado*

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## Bob's Rules of Disorder

Homeowner association meetings are not always run like well oiled machines. Sometimes, they can get downright nasty. Here are some suggestions on how to bring yours to a grinding halt:

### Obtaining the Floor

1. Member shall address the Chair by rising and yelling, "Listen you (insert description of the Chair's ancestry and intellectual capacity)."

2. Person who shouts the loudest shall have the floor.

3. A louder person may interrupt the speaker at any time and take the floor.

### Making Motions

1. Motions may be prefaced by an obscene gesture or speculative statement about the occupation of a director's ancestors.

2. No motions shall be made which include a rope, horse and tree or bird plumage and a petroleum byproduct unless such has been approved in the budget.

3. Following the statement of the motion, the member shall make facial gestures towards two or more members. The Chair shall then repeat the motion and issue a statement suggesting the member either engage in self procreation or immerse forthwith in an aqueous body.

### Voting

1. Members shall be allocated votes in proportion to their body weight and strength.

2. A group whose combined weight is greater than the combined weight of any other group shall be defined as the "majority".

3. The majority rules, except when the Chair sides with the minority.

4. The decision of the Chair is final, regardless of the will of the majority.

### Appealing the Chair's Decision

1. When any member objects to the Chair's decision, the Chair shall respond, "So sue me, you jerk."

2. If a member, in response, hurls a ripe garden product or other object, the Chair shall immediately declare the member to be out of order.

3. The Chair may, at his discretion, hurl an object of equal or greater weight and ripeness at the offending member. ☼



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# The Regenesis Report

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