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Portland Edition

Innovative Homeowner Association Management Strategies

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**The Regenesis Report** provides resources and management tools for just that purpose. Every month, articles of interest to homeowner associations 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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## Orderly Board Meetings

One of the scourges of the HOA world is disorderly board meetings. HOAs large and small struggle with meetings filled with the cacophony of people talking over each other as normal manners and courtesies are abandoned. Such meetings end in frustration. Directors are discouraged when they cannot deliberate and are tempted to work in closed session. Observers are discouraged from volunteering for board service or even from attending future meetings.

Consider the following:

**Meeting Room Setup.** Board meetings are often set up so that the directors sit facing the audience and not each other. That sends two bad messages at once: that the directors are talking to the audience and not talking to each other. Instead, adjust tables in a "C" shape with the open end facing the audience.

**Inadequate Open Forum.** Directors should not talk during an open forum and the audience should not talk during board deliberations. Directors should pay close attention to the comments in Open Forum, so owners perceive that their comments and questions are respected. If an issue arises during the board meeting on which member input is desired, the Chair can open up that option as needed.

**Stay on Target.** Directors need to focus on the Agenda, not any topic that comes to mind. When things stray off topic, the Chair should gently but firmly move the discussion back to the topic at hand. Do not begin discussing a new topic until the current one is resolved.

**Avoid Long Meetings.** Overly long meetings lead to mental and physical exhaustion. Avoid overly ambitious agendas and insist that meeting materials be reviewed by directors in advance. In others words, the directors should come prepared

to make decisions. Avoid repetitive debate. If it starts, call for a vote. Plan for a two hour meeting or less if possible.

**Don't Ignore Disruption.** Some rudely talk over others, interrupt or otherwise inject themselves in a disruptive way. Insist that the Chair control such misbehavior by warning the violator or even ejecting them from the meeting if a repeat offender.

**Allow Disagreement.** There is nothing wrong with a "nay" vote if one believes that vote is not in the HOA's best interests. There is also nothing wrong with a 3 to 2 vote, which is just as binding as a unanimous 5 to 0 vote. When there is pressure to achieve consensus, dissenters feel the pressure to conform and others are frustrated when consensus fails. In a democracy, the majority rules. You can't please everyone. Vote and move on.

**Meeting Rules.** All HOAs should have meeting rules and standards of conduct which are expected from directors and audience.

**Get Educated.** Community Associations Institute (CAI) has very helpful publications regarding HOA management and finances. If there is a local CAI chapter, join it and get smarter. Find your local chapter at [www.CAIonline.org](http://www.CAIonline.org).

By Attorney Kelly G. Richardson

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## Ask the HOA Expert

**Q** We have a resident owner that is paranoid schizophrenic. He vandalizes the common areas, steals property and verbally assaults the residents. All in all, he poses a significant danger. We have filed police reports and obtained a court order requiring a mental evaluation. The doctor keeps sending him home. We are in the process of amending our governing documents to deal with this kind of situation and we're back in court to obtain an order to move him off the property. We're at wit's end.

**A** These kinds of situations are extremely frustrating but it sounds like your attorney is handling it properly. Dealing with mentally unstable people is never easy and courts are reluctant to pass judgment without professional input. Has the board sought out and contacted relatives that might intervene without the need for court action? If there are relatives that can simply take care of what needs to be taken care of (like making alternate assisted living arrangements), much time and expense can be saved.

It is useless to amend the bylaws for situations like this. Some issues simply need to be dealt with on their own merits as difficult as that process might be. Mentally unstable people don't play by the rules.

**Q** For many years, the board has not enforced architectural and design restrictions. Consequently, many unit owners have installed storm doors and/or changed the exterior light fixtures on their units. There is now little or no conformity regarding those additions or changes. Our recent reserve study shows that we are woefully underfunded, so conformity is the least of our worries! Should the board ignore reserving for these items and move forward until we are financially solvent? Will the non-conformity affect property values? Is a little individuality such a bad thing in an HOA?

**A** Yes, your board should reserve for these items for a number of reasons:

1. The HOA is responsible for doing so since it affects the common elements.

2. Non-conformity does reduce property values in common wall housing since the additions vary in quality and, frankly, some additions look awful (no accounting for taste).

3. Individuality should be limited to the unit interior. That is what the governing documents allow and if adhered to, no one will object other than guests.☺

4. The board has no authority to allow owner changes to the common area. Doing so does not legitimize the action, it only complicates enforcement for future boards and exposes the directors who approved such to personal legal liability for exceeding their authority.



[www.amazon.com](http://www.amazon.com): 4.6 Stars

**Q** A homeowner at our HOA recently presented a written work order to the landscape maintenance company. The contractor performed the unauthorized task which also happened to be beyond the scope of their contract. Can the HOA be held responsible for payment of unauthorized work? Should the owners be held responsible for directives given to contractors who have been hired by the HOA?

**A** The homeowner ordered the work, the homeowner pays the contractor's bill. If the work impacts the common area and is not in compliance, the board should have it corrected, if possible, and bill the homeowner. Advise the homeowner that no further communication should take place directly with the landscape contractor. The board should also inform the landscape contractor that the HOA will pay for no work unless it is approved in writing by an authorized HOA representative.

**Q** I recently became a board member. Previous boards have failed to properly plan and budget so we have no reserves. The board decided to have a special assessment of \$2000/unit to boost the balance in reserves. We are already getting blowback from members. One member questions whether we need to continue operating the swimming pool since it is lightly used. Another suggests selling off the clubhouse to raise money. How should the board respond?

**A** There are several issues here. 1. Special Assessment. It's best to have a reserve study done first to determine how much money is needed and how soon. The board wouldn't want to have to do two special assessments close together.

2. Closing the Pool. Operating a pool is one of an HOA's biggest expenses. If a majority of the members no longer want to pay for it, it may be time to discuss closing it. Review the governing documents to see what the process may be, if any, for discontinuing a common amenity.

3. Selling the Property. This is a much more complicated issue that needs to involve a knowledgeable HOA attorney. It may require 100% approval of all the owners and their mortgagees (will never happen).

Just because an owner comes up with a bright idea doesn't mean the board needs to spend time and money chasing down all the details. Put these unit owners to work investigating the feasibility of their suggestions. Suggest that a petition be circulated to the

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members to see if there is significant support for closing the pool or selling the clubhouse. If at least 25-35%, it's reasonable to schedule a special meeting to discuss it. Be sure to discuss the entire process with the HOA's attorney to make sure it conforms with applicable state statutes and the governing documents.

**Q** Our management company seems too busy to handle our HOA's business. The board wants to evaluate other management options. Is there some form or checklist we can use? How do we determine which company is best for our needs? A Changing managers should be a last resort since every company comes with strengths and weaknesses. The board should discuss specific concerns with the current manager or company owner to see if expectations can be aligned. If the manager/owner agrees, she should be given a reasonable time period to accomplish the changes. If the manager/owner is not interested or able to comply, beginning the search for a new manager should start with the goal of making a change within three to six months. This kind of transition is complex and the board should take its time.

Managing HOAs is a specialty. While there are many property management companies, there are very few that do this kind of work. Do not consider any that don't specialize in it and have the clients to prove it. You will want a list of references from HOA clients comparable to yours.

Develop a scope of work. HOA managers charge according to the tasks outlined in the Management Agreement. The more you ask of them, the more they charge. Regular management tasks include:

1. Financial reporting, collections and bill payments.
2. Supervision of maintenance and contracts.
3. Rules enforcement.
4. Attending meetings to advise the board.

5. Responding to information requests (if it involves a unit sale, it usually carries additional charge).

6. Processing insurance claims (may involve additional charge).

There is a HOA Management Screening Checklist in the Manager Issues section of [www.Regenesis.net](http://www.Regenesis.net) available to Gold Subscribers. \*

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### **Radon on the Radar**

Radon is a radioactive, colorless, odorless and tasteless gas. It occurs naturally in tiny quantities as a step in the radioactive decay of uranium. It has a half-life of only 3.8 days, making it one of the rarest elements. However, since uranium is one of the most common radioactive elements with a half-life of several billion years, radon will be present long into the future since, in spite of its short half-life, it is continually being generated.

Radon is under normal conditions gaseous and easily inhaled. Due to differences in geology, the level of the radon gas differs by location. Radon can accumulate in basements and crawl spaces. According to the Environmental Protection Agency (EPA), breathing high concentrations of radon is the second most frequent cause of lung cancer after cigarette smoking and causes 2900 deaths per year among people who have never smoked.

So what should an HOA do with this information? In common wall HOAs, there may be an obligation to mitigate radon seeping from the ground into dwellings. Where this is likely to pop up is during a building inspection related to a real estate sale in locations known for radon. Lenders require the inspector to do testing prior to a closing. The seller that receives such a positive report may be required to "fix it" and might pass that obligation on to the board. If your board is aware of or has been informed of positive radon

reports, the information should be circulated to all members.

The HOA may be responsible to mitigate the problem depending on responsibilities outlined in the governing documents. Have a knowledgeable attorney review the documents and issue an opinion letter for board guidance. If it is deemed to be an HOA responsibility, the board should arrange a commercial radon inspection to determine a recommended course of action. It may point to mitigating it by having Radon Mitigation Equipment installed and maintained by a qualified contractor. Treat it seriously.

If the HOA is not responsible for mitigation, inexpensive short term radon test kits are available at building supply outlets. If the results indicate a radon level of or more, a long term test should be done for more conclusive results. A level is 4 pCi/L (picocuries per liter of air) or more indicates a need for Radon Mitigation Equipment, either by a handy homeowner or a qualified professional. With the proper test and mitigation equipment in place, it won't delay a sale closing.

There is also ongoing radon monitoring equipment which is hardwired with battery backup. It continually tracks radon levels and can even be connected to a smart phone app.

Keep radon on the HOA's radar by being proactive. For more information, see [www.epa.gov/radon](http://www.epa.gov/radon) \*

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### **Lights! Cameras!**

A quandry that homeowner associations face is how implement security measures when a known violent resident exists. The board is in a Catch 22: Fail to inform residents about a violent resident who subsequently injures someone and the board is held responsible. Inform residents of a violent resident who subsequently files

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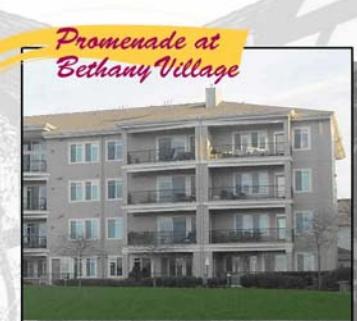
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suit against the HOA for libel and the board is held responsible. But failing to act is not an option. Besides taking and responding to complaints in this regard seriously, one way to monitor resident activity is by security cameras. If the board is thinking about it, consider:

1. Who is going to service the cameras to make sure they are functioning properly?
2. Who is going to monitor the cameras and sound the alert if something improper is occurring?
3. How many cameras and where are they needed?
4. Do security cameras actually stop criminal activity?
5. Is the homeowner association responsible for law enforcement?

Installing security cameras is an uncertain method for controlling crime. They are often a knee jerk reaction to a recent security incident. Once the hysteria passes, the desire to pay the cost is rarely there. Give the issue time to mellow. Security is more perception than reality. Many of the surveillance cameras you see with the blinking red lights are just that...fake cameras with blinking red lights. Under the same theory, inexpensive printed signs that read "24 Hour Surveillance" can be just as effective as fake cameras...assuming that the bad guys can read.

Most security problems should be handled by local law enforcement. The HOA is not prepared to deal with real crime in an effective way. Defer to the pros. They are trained and paid to do the job.

The HOA can and should form a security committee and all residents should be given information about Neighborhood Watch and other self help security programs.

The board can also have local law enforcement attend a board meeting to discuss the issues and solutions. This is particularly important since it will be recorded in the minutes that law enforcement was formally put on notice of problems. Obviously, if law enforcement suggests corrective measures, the HOA should take specific

action to increase security (like improved lighting, fencing, reduced landscape cover, etc.). The board needs to act. But leave playing cop to the cops. 

HOAs. All must pay or all will suffer the consequences.

**HOA KNOW HOW:** Ask for the current amount of delinquencies and number of owners that are delinquent. If the number is over 5% of the annual budget, walk away.

**HOA Rules.** In addition to maintaining common elements, HOAs also have certain rules and regulations that must be followed. Those rules may include architectural and design restrictions which control the look of your unit or house or lifestyle rules that control pets, parking and other things. Failure to comply may result in fines or restriction from common element use (like the pool).

**HOA KNOW HOW:** Request copies of all rules and regulations *before* you buy to make sure there is nothing there you can't live with.

**Get the Big Picture.** While the home or unit you are considering may be newly remodeled and picture perfect, as an HOA owner, you have an undivided financial interest in all common elements.

**HOA KNOW HOW:** Look at *all* the buildings and common elements, not just the unit you are interested in buying. Do you see deferred maintenance like peeling paint, dilapidated roofing and fences and broken up paving? If so, you are either buying into a coming-soon-to-your-HOA-special assessment or a board with its head in the sand which will fail to maintain your biggest investment. Either way, this is not good news for your property value. This is particularly important in common wall HOAs.

**How the Board Does Business.** Inquire how often the board meets (should be at least quarterly). Get copies of board meeting minutes for the past year and read them to determine the kinds of issues the board is dealing with. When you read the minutes, do you see evidence of board action to protect and maintain the common elements? If you see a board pattern of "does little" in the minutes, like Nero, the board is fiddling while the HOA burns.

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### HOA Know How

When you purchase into a homeowner association (HOA), you automatically become a member and obligate yourself to financially support the operation and obey the rules. But few buyers take the time to examine the HOA information to make an informed buying decision. Here are some of the basic Know Hows:

**HOA Fees.** As a member of the HOA, you will pay fees to support management and maintenance. High rise condominiums and HOAs with clubhouses, pools and parks have much higher fees than those with few common elements. If the HOA does not have and fund a reserve study (30 year plan for major repairs and replacements) for common elements like roofing, painting, asphalt, decks and fences, a special assessment will be charged to each owner that can run into many thousands of dollars. Since boards of HOAs that don't follow a reserve study tend to react rather than plan, these special assessment can happen with little notice and the financial obligation will fall on all owners, including brand new ones.

**HOA KNOW HOW:** Review and understand the current budget and reserve study. If you are considering buying into a HOA that does not have a reserve study, move on. It's a special assessment waiting to happen.

**Delinquencies.** HOAs can be great when the finances are handled well. Sharing the cost of costly amenities makes them more affordable for all. However, when one or more owners do not pay their share, either the rest must make up the shortfall or services cut. There is no government bail-out for



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**HOA KNOW HOW:** Walk away.

**Professional Management?** If the HOA is self managed, this is a BIG RED FLAG. This means the fate and maintenance of your largest investment is in the hands of untrained part time volunteers.

**HOA KNOW HOW:** If you are the kind of person that loves a challenge and willing to dedicate many hours of volunteer time to steer board business, this may be the place for you. If you are not, walk away.

**Rental Restrictions.** As lenders become more aggressive in setting rental limits to HOA loans, rental restrictions are becoming more common. They come in two flavors:

**1. Limited Restrictions.** Only a certain percentage or number of the homes or units can be rented. The board/manager must administrate this moving target.

**2. Total Restriction.** All owners are restricted from renting. While the most fair approach, a slow real estate market can force certain owners into a difficult position if they can't sell or rent. And federal law requires exceptions to be made for military members on deployment.

**HOA KNOW HOW:** If your objective is to buy and rent the home/unit and there are rental restrictions, move on.

**HOA Insurance Coverage.** Investigate the specifics, particularly if you're in an area prone to flood, earthquake, tornado or hurricanes.

**Consider the HOA Lifestyle.** Do you hate being told what you can do with your property?

**HOA KNOW HOW:** If the HOA has extensive architectural and design control, walk away.

A homeowner association can be your best friend when it prevents your neighbor from painting her house neon pink, but your worst enemy when they fail to properly maintain the common property or impose overly restrictive rules. Make sure you know exactly

what you are getting into before you sign the dotted line. ☀

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## Water Water Everywhere

A verse from The Rhyme of the Ancient Mariner reveals a man surrounded by water that he wants but can't have. Areas like the Pacific Northwest has lots of water in the wrong places and drainage is a common problem. Drainage falls into two categories: structural, which involves buildings, and topographical, which involves surfaces.

All buildings have a structural drainage system: Roofs capture the water, gutters manage it and down spouts and ground drains dispose of it. 90% of structural drainage problems start with the system design. When gutter size is determined by aesthetics, downspout placement by convenience and little thought given to carrying capacity, poor drainage is the result. If overflowing is occurring, design corrections are in order.

Improper installation of well designed systems is another variable. The proper functioning of all gutters, down spouts and ground drains is based in positive slope...water runs downhill. Resetting a negative slope can correct that issue.

Ground drains receive water from roofs, gutters and down spouts. They also accept leaves, twigs, bottle caps, nails, pieces of shingles and what-have-you that create blockage. Regular gutter and downspout cleaning helps maintain healthy ground drains. Periodically, however, a pipe rooting service is called for. As the name implies, many of the blockages can be attributable to roots getting in the pipes. This is particularly common in older systems that have cracked pipes or unsealed joints. If ground drain backups

are frequent, it's wise to have a preventive pre-winter rooting done to the system. If you forget, fear not. The flooding will remind you. ☀

Now, on to topographical drainage. Some areas are blessed with a high clay content soil which "sponges" water. Positive grading is critical to move water downstream because clay won't allow water to "percolate" out quickly enough to prevent ground saturation. Ground saturation creates swampy, soft areas and puts enormous pressure on building foundations. If the foundation has cracks, the water will find them, flooding crawlspaces and basements. If there are no cracks, the pressure will cause a weakness in the concrete and crack it. If these conditions exist, excavating around the foundation and installing a perforated drainage system to carry the water away is a possible solution.

Perforated pipe systems are a good solution as well for swampy landscaped areas where regrading isn't possible. Another solution is a french drain system like an underground perforated 55 gallon drum set in the low or swampy area. Ground water accumulates in the drum and either slowly percolates out or is removed by drainage pipe system sometimes supplemented with a sump pump.

The rains of winter teach us much about weaknesses in our drainage systems. While the rains will pass, poor drainage will continue to damage the landscaping and buildings if not corrected. Take the time this winter to inspect your property for problem areas that can be corrected during fair weather. Before you undergo any substantial corrections, get detailed design specifications from a qualified engineer. ☀

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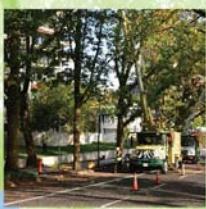
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## An Unsharpened Pencil

In 2000, Billy Graham, the famous Christian evangelist, was invited to a luncheon in his honor in Charlotte NC. He initially hesitated to accept because he struggles with Parkinson's disease. But the host said, "We don't expect a major address. Just come." So he agreed.

After wonderful things were said about him, Dr. Graham stepped to the podium, looked at the crowd, and said, "I'm reminded today of Albert Einstein, the great physicist who was honored by Time magazine as the Man of the Century. Einstein was once traveling from Princeton on a train when the conductor came down the aisle punching the tickets of every passenger. When he came to Einstein, Einstein reached in his vest pocket. He couldn't find his ticket, so he reached in his trouser pockets. It wasn't there. He looked in his briefcase but couldn't find it. Then he looked in the seat beside him. He still couldn't find it.

The conductor said, "Dr. Einstein, I know who you are. I'm sure you bought a ticket. Don't worry about it." Einstein nodded appreciatively. The conductor continued down the aisle punching tickets. As he was ready to move to the next car, he turned around and saw Einstein down on his hands and knees looking under his seat for his ticket.

The conductor rushed back and repeated, "Dr. Einstein, Dr. Einstein, don't worry, I know who you are. I'm sure you bought a ticket." Einstein looked at him and said, "Young man, I too know who I am. What I don't know is where I'm going."

Dr. Graham continued, "See the suit I'm wearing? It's a brand new suit. My children tell me I've gotten a little slovenly in my old age. I used to be a bit more fastidious. So I bought a new suit for this luncheon and one more occasion. You know what that occasion is? This is the suit in which I'll be buried. But when you hear I'm dead, I want you to remember this: I not only know who I am, I also know where I'm going."

Life without God is like an unsharpened pencil. It has no point. ☀

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## Paraprosdokians

A "paraprosdokian" is a literary device in which the final part of a phrase or sentence is unexpected.

- ☺ Whenever I fill out an application, in the part that says "In case of emergency, notify \_\_\_\_\_" I write "DOCTOR."
- ☺ I didn't say it was your fault, I said I was blaming you.
- ☺ Why does someone believe you when you say there are four billion stars, but check when you say the paint is wet?
- ☺ Behind every successful man is his woman. Behind the fall of a successful man is usually another woman.
- ☺ A clear conscience is usually the sign of a bad memory.
- ☺ You do not need a parachute to skydive. You only need a parachute to skydive twice.
- ☺ The voices in my head may not be real, but they have some good ideas!
- ☺ Always borrow money from a pessimist. He won't expect it back.
- ☺ A diplomat is someone who can tell you to go to hell in such a way that you will look forward to the trip.
- ☺ Hospitality: making your guests feel like they're at home, even if you wish they were.
- ☺ Money can't buy happiness, but it sure makes misery easier to live with.
- ☺ I discovered I scream the same way whether I'm about to be devoured by

a great white shark or if a piece of seaweed touches my foot.

- ☺ Some cause happiness wherever they go while others whenever they go.
- ☺ I used to be indecisive. Now I'm not sure.
- ☺ When tempted to fight fire with fire, remember that the Fire Department usually uses water.
- ☺ You're never too old to learn something stupid.
- ☺ Nostalgia isn't what it used to be.
- ☺ A bus is a vehicle that runs twice as fast when you are after it as when you are in it. ☀

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