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Portland Edition

Innovative Homeowner Association Management Strategies

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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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Neighborhood Discourse

Whenever neighbors live in close proximity, from time to time there will be conflict. The three major bones of contention in homeowner associations (HOAs) are People, Pets and Parking. With People, the list of possible conflicts is infinite. Whatever someone does that irritates someone else qualifies. With pets, it's usually barking but may be aggressive or destructive behavior. Parking includes blocking fire lanes, parking junk, inoperable or commercial vehicles.

HOAs are controlled by state law and those laws vary from state-to-state. Each HOA has its own set of government documents as well as rules which can change from time to time. Changes to the governing documents require a vote of the members while the board can enact rules that are in keeping with the governing documents and state law.

Compliance with rules is governed by the board or management hired by the board. If the board or management and rule violator cannot agree, the recourse is civil court along with all its fees and lawyers. Even a simple case can be costly. If the violator prevails, he may end up paying his own attorney fees and will pay a share of the HOA's attorney fees because HOAs pay expenses from owner contributions. Win, lose or draw, neighbor conflict often results in lasting animosity. That's a good reason to deal with conflict before it reaches that point.

Here are six ways to engage in neighborhood discourse about rules:

1. Know the rules. The board should distribute them from time to time and make them easily accessible on a website for members and prospective members. Both board and members should read them. Knowing and complying with the rules avoids trouble. All rules need to be written. Stating that "it's always been done that way" doesn't cut it.

2. Be pleasant. Board members are both volunteers and neighbors. Cordiality will lead to better discourse and outcome.

3. Do it in writing. Written communication is easier to remember. Document everything to avoid "he said, she said".

4. Don't argue the rule. Arguing the need for a rule after violating it will go nowhere. If a rule should be changed, get the members to sign a petition later.

5. Consider the penalty. Some HOAs can levy large fines that can become a lien on a home or unit and lead to foreclosure. Keep the stakes in mind when deciding how far to take the fight.

6. Don't stop paying HOA fees. Refusing to pay regular fees due to a rule dispute only makes the outcome more expensive by adding collection costs, interest and late fees. Keep paying regular fees and focus on the rule issue.

Other considerations. HOAs have the legal authority to file liens against member homes and even foreclose the property. If a member receives a notice of a rule violation, the first step is to call and ask for a face-to-face meeting. At that meeting, explain the situation and appeal to a sense of fairness. If a rule was inadvertently violated, admit guilt, apologize and promise that it will never happen again. If this is a first offense, it will likely go away.

Sometimes a member believes that there is a vendetta at play. This belief can derail an open discourse and resolution. In fact, it could make the outcome much worse. Both sides should stick to the facts, even if the violator or board has a history of being uncooperative or combative.

Litigation is expensive for the HOA. This fact opens the door for compromise. Some boards are unaware that rule enforcement is not black and white. Even if a violator is guilty, it's okay for the board to compromise if faced with a legal battle and its associated costs and stress.

Get involved. Too many members stand on the sidelines. If the current board is ineffective or overly aggressive rule enforcement, it's time for more reasonable members LIKE YOU to come aboard. ☀

Ask the HOA Expert

Q We are nearing completion of our HOA website and getting ready to launch. The board intends to use email for meeting notices, dues notices and event reminders. Right now our governing documents state notices must be sent by US Mail. Is this going to pose a big issue? Also, should we get each member's written consent to communicate via email?

A Since a high percentage of citizens now regularly use email and it's free, fast and efficient, many HOAs are now communicating that way. However, since your governing documents require use of mail, the members need to vote to approve a change. I suggest holding a special meeting including distribution of proxies to ensure a quorum to handle this issue as soon as possible.

Yes, you should get written approval from each member to use email. Some don't have computers or rarely use them. Also, you should consult with an attorney about communicating certain kinds of information like rule violations, delinquency notices and legal notices solely by email. While it may be okay, it's still a good idea to mail such notices as well.

Q What are the possible repercussions when a board throws out a membership decision voted on at the Annual Meeting?

A If member approval is required to do what you describe, the board must follow the dictates of the vote. If the vote was advisory only, the board could go a different direction but that clearly would invite well deserved challenge from the member majority who expressed their preference. Smart boards would not do such a thing.

Q Our HOA recently completed a major reconstruction project and the board would like to celebrate the event with a barbeque. Can the HOA pay for the function or should we have a potluck?

A Budgets for most HOAs are barely enough to cover required expenses, much less socials. Unless the HOA has a social budget, it should be potluck.

Q Our parking rules do not allow vehicles with dual axles to be parked on the property. But we now have quite a few residents that drive pickups so equipped.

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A Restricting certain kinds of vehicles is usually due to size (like an RV), commercial use (like a contractor's truck) or recreational use (like a boat). Since parking in most HOAs is a limited commodity, it makes sense to limit parking to automobiles, van and small trucks. Some small trucks have dual axles so rather than focus on the axles, the rule should be interpreted according to vehicle size. The board has the authority to amend parking rules and it sounds like it's time to do just that. There is a sample Parking Policy in the Policy Samples section of www.RegenesiS.net

Q Our board has a running battle with various unit owners about who is supposed to fix and maintain what. As a result, the board has paid for repairs that were probably the unit owner's

responsibility. How do we get this under control?

A The board should compose and adopt a **Maintenance & Insurance Areas of Responsibility Policy** which defines responsibilities HOA vs Owner. The idea is to break down the buildings and grounds into component parts and then describe who is responsible. Always review and use the governing documents as a guideline if direction is provided. While the Areas of Responsibility Policy can be subject to interpretation under certain circumstances, it usually provides clear guidance to both the board and owners. Moreover, it provides the board with the basis for consistent handling of maintenance issues. Another benefit is it clarifies for the HOA's and unit owners' insurance carriers what things the HOA is responsible for and eliminates claim disputes. This is a "must have" policy in any common wall community. There is a sample of this policy in the Policy Samples section of www.RegenesiS.net

Q We have a resident we routinely have to call the police on for disturbing the peace, verbally assaulting and stalking neighbors and threatening them with physical harm. This resident is essentially psychotic and totally unpredictable. This has gone on for years and we've reached our limit. This situation is now affecting sales! What can we do?

A Have you been in contact with this person's relatives to ask for their help? If there are no relatives or they refuse to help, your attorney needs to file a civil lawsuit and ask the judge to mandate remedies like mental health treatment, a restraining order, etc. The fact that this person has violent tendencies cannot be ignored. Unfortunately, the court route may take longer than you would like but you simply have to stay the course and assume the court will provide a permanent answer to this. In the meantime, continue to have him arrested if necessary. It will only strengthen your case once the matter makes it to trial.

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Q Must all HOA business be discussed, debated, and voted on at board meetings open to the members? We have a group of dissidents that routinely disrupt and interfere with the board discussions. It's hard to get business done.

A The board should deal with *most* HOA business (except legal matters, contract negotiations, private collection matters and a few other topics) at open board meetings. Part of the disruption issue may be related to how the board seats itself at board meetings. If the board is sitting firing line style facing the audience, it encourages the audience to engage and interrupt since board comments are aimed at the audience. If this is the case at your meetings, the board should reorient itself around a conference table large enough for that purpose and seat the audience elsewhere but **not** at the conference table.

Regardless of the seating arrangement, if the board president is not effective in restraining members of the audience that interrupt, the problem will persist. The issue can be handled tactfully in a short statement preceding the opening of every board meeting where there is an audience by simply stating "Please remember that this is a *board* meeting, and that the audience is not to interrupt unless asked to speak by the Chair." The Chair, of course, must quickly seize control if an interruption happens and ask the person to leave if they do not cease and desist. If your Chair is not up to this task, someone that is should run the meeting.

Q Our board president has many wonderful qualities, however, lacks level headedness when confronted by irate members at meetings. Being aware of his own shortcomings, he has delegated the act of chair to the vice president whom is well versed in parliamentary procedure. Is this against any rule? Our documents state that the president presides over meetings.

A Dealing reasonably with confrontation at board meetings is a basic duty of the president. A vice president should only assume this duty if the president is

absent. The president cannot transfer his authority to someone else. It has nothing to do with parliamentary procedure. The president needs to maintain control over the civility and tone of the discussion. If he is not up to the job, he should step down and the board should appoint someone else, like the VP, who is. ☸

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Service Provider Profile Vern Newcomb

American Benefits Insurance

The Regenesisis Report (TRR) sat down with Vern Newcomb (VN) of American Benefits Insurance.

TRR Tell the readers about yourself. Are you married?

VN I've been married for 25 years and have three boys. My oldest is a senior at Oregon State, the middle one is studying in Israel and the youngest is a high school junior.

My primary career focus since 2003 has been HOA insurance. I am passionate about providing education to boards and managers about its complexities. I am always watching for industry trends that could affect HOAs like cyber liability and earthquake coverage.

TRR Is earthquake insurance in the Pacific Northwest really necessary? It is rarely required by governing documents.

VN The experts indicate that the Pacific Northwest is overdue for a major earthquake. The availability and cost of earthquake coverage is related to the insurance industry's "capacity", the number of competitors providing the coverage. Earthquake is "catastrophic insurance", the same classification as flood, hurricane and tornado. Insurance

companies reinsure all catastrophic policies with the global reinsurance market. Catastrophic events anywhere in the world impact insurance rates in the US. For example, the recent tsunami in Japan impacted insurance rates everywhere. In spite of the fact that many governing documents don't require earthquake insurance, most of my condominium clients have it. The premiums are currently less expensive than in years past.

TRR What are other insurance coverages that HOAs should know about?

VN Cyber theft coverage works in tandem with fidelity/employee dishonesty (embezzlement) insurance when there is theft by computer fraud or wire transfers. It also protects HOA bank funds from unauthorized withdrawals from a foreign source or a third party who hacks in and takes funds via computer. While banks often protect personal accounts from this, corporate accounts may not be protected. HOAs should verify this with their bank to protect their funds.

TRR Anything more to know about fidelity insurance?

VN Some HOA fidelity (embezzlement) policies exclude the management company. Since the management company usually has check writing authority, this is a huge gap in coverage. Our policy includes management and keeps the HOA compliant with the governing documents.

TRR Insurance contracts are mind numbing in their details. How is an HOA board supposed to understand what it is getting, or more importantly, what it is not?

VN No two insurance company contracts are the same. Boards often go to the bottom line price without understanding what they are buying until it's too late. We like to provide a two page document called "Premium & Coverage Summary" which details essential coverages that an HOA needs in terms that a layman can understand. It can also be used for a Request for Proposal (RFP) so that the board can get apples to apples proposals. It is important that the board knows what they're buying including the coverage differences. Meeting with the board to



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explain coverages is another added benefit our agency provides.

TRR What other concerns should an HOA board know about?

VN Older HOAs need to be aware of building components that have “aged out” insurance-wise. Many HOAs were built prior to 1985. Insurance companies may require replacement of roofs, plumbing, electrical, etc. for continued coverage. While unit owners perform upgrades within their units, the board needs to be proactive in getting owners to do them because it affects the entire HOA.

TRR Any other advice?

VN Insurance companies are sensitive to the types and number of claims filed. Multiple claims related to failed plumbing may trigger a requirement for plumbing replacement. Most HOA claims are related to water damage. Sometimes, the water originates from within the building unit to unit. Other times it comes from leaking roofs, siding or windows. We like to educate boards on the difference as it relates to their insurance policy. Some claims are covered events and some are not. Some claims are not worth filing a claim due to the level of damage. It is important to have an agent advocating for the HOA when it comes to claims.

If a board has any questions, don't hesitate to call me at 503.292.1580 or email vern@abipdx.com 🌟

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eVoting

As governmental entities, homeowner associations hold regular elections to populate their boards and periodic votes on governing document amendments. The traditional method includes holding annual meetings, special meetings or ballot-by-mail. These methods are cumbersome and often expensive to pull off. Moreover, establishing a legal quorum to transact business has proven

to be problematic for many HOAs due to apathy.

Fortunately, the internet now provides the wonderful option of electronic voting. eVoting improves efficiency, effectiveness and reduces costs associated with traditional mailing and meetings. According to www.internetworldstats.com almost 75% of Americans use the internet and that percentage is much higher for HOA members who are generally higher income and bigger internet users. Those facts in place, establishing an internet platform for voting makes huge sense. So what are the options?

Do It Yourself. In its simplest form, electronic voting can be done easily as a DIY project using email. A ballot is attached in Word or fillable PDF form which can be emailed, completed and emailed back. The entity administering the ballot collection merely keeps and updates a master list as ballots are received. The ballots can be stored electronically. As the deadline approaches, repeated requests can be emailed to those that have not yet responded. For the small percentage of members that don't do email or would prefer paper, mailing a ballot with a return envelope should remain an option. The DIY option is easily pulled off by even the smallest HOAs.

Online Voting Services. A number of online options have come into being over recent years which provide automatic tallying, password protection and enhanced privacy. The system again works via email by sending a link to each member which leads to the ballot which is completed and submitted completely online. Since the process is automated, there is less chance for human error and it tracks each voter by email address and time they voted. As with most services, there is a base cost of this service which may be prohibitively expensive for small HOAs but the cost is very attractive for large ones.

Who Provides Online Voting Services? There are a number of websites that offer this service which include:

www.eBallot.com
www.simplyvoting.com
www.electionsonline.us
www.votehoanow.com.

The setup process is easy and priced according to the number of voters.

The time has come to green the HOA voting process. But before you jump into e-voting with both feet, check your governing documents for voting requirements which sometimes require that ballots must be sent by mail. If so, the governing documents will need to be amended to allow electronic voting by an appropriate vote of the members.

If there are no such restrictions in the governing documents, the board can enact a resolution which allows and describes the process of online voting. As with any resolution, it is highly advisable for the board to circulate a draft of the resolution to the members for a review and comment period of at least 30 days. Since there is little downside and much to gain like drastically reducing cost and being able to achieve a quorum more easily, this is an amendment worth putting in place as soon as possible. 🌟

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The Maintenance Plan

The purpose of a Maintenance Plan is to instruct a homeowner association board and property manager how to properly maintain common element components. Following a well prepared Maintenance Plan will help extend the useful life of the components and reduce costs to the members.

An effective preventive maintenance plan should satisfy the following five key goals:

1. Preserve owners' investment. Preventive maintenance can extend the life of building components, sustaining and enhancing the property's value.
2. Help buildings function as they were intended and operate at peak efficiency. Because preventive maintenance keeps equipment functioning as designed, it reduces inefficiencies in operations and energy usage.

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3. Prevent failures of building systems. Buildings that operate trouble-free allow the occupants to enjoy the property as intended. Preventive maintenance includes regular inspections and replacement of equipment crucial to building operations.

4. Sustain a safe and healthy environment. Protecting the physical integrity of building components preserves a safe environment for residents.

5. Provide cost effective maintenance. Preventive maintenance can prevent minor problems from escalating into major failures and costly repairs. Preventive maintenance can be handled relatively cheaply, efficiently and systematically through advance scheduling while major failures always happen after hours, at peak billing times and to equipment that must be special ordered (Murphy's Law).

The objective of the Maintenance Plan is to provide clear direction to the board and management how and when to provide repairs to building and grounds components. If consistently followed in conjunction with a properly prepared reserve study schedule, the components will enjoy their maximum useful lives and related repair costs kept to a minimum. This is how a successful homeowners association was meant to operate. 🌱

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End of Life Issues

Dear Unit Owner,
The Board of ABC Condominium is saddened to inform you that our boiler has died. In lieu of flowers, please send a check for \$2,000 which is your pro-rata share of the replacement cost.
Sincerely,
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The Regensis Report

The end of life of common elements in a homeowner association (HOA) can be traumatic to the board, owners and management, especially when there is no reserve study. When major components must be replaced, the special assessment letters that go out are seldom anticipated.

One of the most difficult challenges that HOAs face is dealing with physical obsolescence. HOAs that are 30-40 years old are struggling with deteriorating condition. Regardless of the quality of the regular maintenance program, the time ultimately arrives maintenance money is being wasted and major repairs or replacements must be made.

How HOAs come to terms with these end of life issues are described by Elisabeth Kubler-Ross in her book "Death and Dying", which include denial, anger, bargaining, depression and acceptance. Knowing that the HOA will experience these stages can make it easier for boards and managers to work to a more successful outcome.

Denial. Many boards focus on operation costs in the early years and give little thought to future repairs. Although the board has a fiduciary duty in this regard, there is often relentless pressure from owners to keep fees artificially low to stay competitive with other HOAs. Faced with increases in the annual cost of services, reducing or eliminating contributions to long-term capital reserves is often the path of least resistance to hold off fee increases. However, when a major component fails, there are no funds to replace it and the cost must be paid by special assessment.

The board often buries its head in the sands of denial with statements like "If it ain't broke, don't fix it" and "Just put a Band-Aid on it". The manager must continually remind the board about the consequences of aging components. Commissioning a reserve study provides a framework for scheduling work and reserve funding goals. The reserve study should also be communicated to owners at a special meeting.

Anger. As condominiums approach middle-age, boards are faced with hard decisions. The manager is often the

bearer of the bad news and sometimes the board suffers a lapse of memory about previous warnings. They know that special assessments will not be well received and go to great lengths to avoid approving them. Blaming someone else for the problem (like the builder or manager) will be a temporary distraction but without money, special assessments are the most realistic solution. This is also a good time to enact a plan of increasing fees to build up the reserve fund to avoid special assessments in the future.

Bargaining. Bargaining is a common tactic by members who try to forestall expensive repairs. Those tactics include filing injunctions against the board to stall the process. Other bargaining tactics include roofs can be patched, less expensive systems can be bought, the low bid is the best choice or that the repairs should be postponed. Or, a friend in the industry has suggested that the HOA is being taken to the cleaners.

The board may also try to negotiate the useful life of components. Managers can cave into such board pressure but inevitably, the components will fail and often at the least opportune time. Consider a boiler failure in mid-winter, when emergency replacement will be much more costly than a scheduled replacement.

Depression. Owners get emotionally involved in board decisions that affect their homes. But unlike single family home owners, HOA owners do not directly control the decision-making process. The feeling of powerlessness can be overwhelming and result in depression. Empowering owners by sharing the long-term repair strategy will help counter the feeling of powerlessness. The board can distribute information explaining the issues and asking for input if meetings cannot be held. Informing unit owners in advance allows them to plan for the upcoming costs. Participating in the process will go a long way in easing a transition to acceptance.

Acceptance. Ultimately, the repairs must be done. The board has the responsibility to maintain the common elements and must make the tough decisions that are in the best interests of the homeowners association. However, gaining owner acceptance is key in

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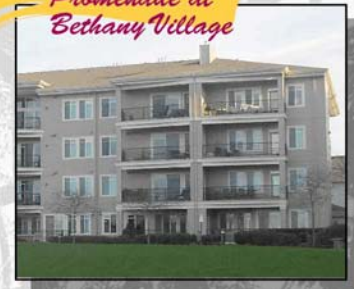
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maintaining harmony and good relations. To achieve this goal as painlessly as possible, the board should adopt and follow a properly prepared reserve study so that the HOA will be ready for the inevitable end of life issues.

By Patricia Brawley of Community Solutions. 🏠

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Scarcity Principle

If something is difficult to get, then getting it demonstrates to ourselves and others that we are in control of our environment. Threatening to take something away is showing the other person that you are in control. The desire of scarcity is thus the competitive urge to maintain control.

If you can control supply, then you have a significant lever on demand. The DeBeers company buys huge quantities of diamonds on the world market, simply to keep them scarce so that their high price is maintained.

If something is not scarce, then it is not desired or valued that much. Praises from a teacher who seldom praises are valued more than praises from a teacher who is liberal with his or her praise.

Scarcity is non-linear process. As something becomes more scarce or less scarce, the desire for it does not change in a proportionate way.

If everything is scarce, then scarcity itself lacks its value and people become too used to it. Studies of retail sales have shown that if more than about 30% of goods have sale sticker on them, the effectiveness of this method decreases.

“This week only”, “Last one!”. Scarcity is a principle known by all retailers who milk it right down to the last drop. If something is rare, it seems we find it somehow more desirable. A

shortage of anything sends people scurrying to the shops to stock up, often fueling the shortage and keeping the spiral going.

Scarcity is the lack of something. When we realize that we do not have something, we desire it. Banning it only makes things worse. Just telling someone that they should not do something makes it more desirable. When “Lady Chatterley’s Lover” was first published it got banned. Millions of black market copies were sold and it made the author, D. H. Lawrence, famous. People flock to see a heavily censored film. Music which is banned on radio stations shoots up the charts.

Competition uses the scarcity principle, as only one person or team can win. This also highlights the social nature of scarcity: we judge ourselves against others. When they have things we do not, we become jealous.

Parents often try to control children in their rationing of attention and affection. Children soon pick up on this and play the game in reverse.

The natural rebelliousness of teenagers comes out in scarcity games as parents restricting what their children actually cause them to rebel. “Don’t you dare take drugs” may actually be the wrong thing to say, particularly if the child has a contrarian nature.

This game continues in other forms as we grow to adulthood, and telling people not to do things perpetuates the “banned substances” game. You can ration pretty much anything, including goods, time, attention, friendliness, agreement and so on. Create envy, showing how people have what you are selling. Indicate how the supply is running short as everyone else is getting one.

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The fact that there’s a Highway to Hell and only a Stairway to Heaven say a lot about anticipated traffic.

My people skills are fine. It’s my tolerance for idiots that needs work.

I’m only responsible for what I say, not for what you understand.

I can explain it to you but I can’t understand it for you.

So when is this “old enough to know better” supposed to kick in?

Have you even listened to someone and wondered “who ties you shoelaces for you?”

I prefer not to think before speaking. I like being just as surprised as everyone else by what comes out of my mouth.

Be careful when you follow the “masses”. Sometimes the “m” is silent.

I hate it when the voices in my head go silent. I never know that they are planning.

If people could read my mind, I’d get punched in the face a lot. 🏠

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