



# The Regenesi Report



Portland Edition

Innovative Homeowner Association Management Strategies

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Managing an HOA can be a lonely and frustrating task. Take heart. Help is on the way.



**RICHARD L. THOMPSON**

EDITOR & PUBLISHER

rich@regenesi.net

**Regenesi, Inc.**

PO Box 19605  
Portland OR 97280

**www.Regenesi.net**

**PH 503.481.7974**

## Interests in Conflict

The headlines read, "Politician Denies Conflict of Interest Allegations". What exactly is "conflict of interest" and how can you avoid one? A conflict of interest is "a situation in which a person such as a public official, employee or board member has a personal interest sufficient to influence the objective exercise of official duties." There are three key elements in this definition:

**Personal Interest.** Often this means a financial interest, but it could mean providing a special advantage to a spouse or child. Taken alone, there is nothing wrong with pursuing personal interests like changing jobs for more pay or helping your daughter improve her golf game. The problem comes when this personal interest comes into conflict with the second feature of the definition:

**Official Duty.** By stepping up to a directorship, you acquire obligations to the homeowner association (HOA) and the other owners. These obligations are supposed to trump personal interests.

**Influences Objectivity.** Conflicts of interest interfere with objective judgment. A major reason people value professionals is that they expect them to be objective. Personal interest that interferes with that objectivity is a matter of legitimate concern. So it is also extremely important to avoid "apparent" and "potential" as well as "actual" conflicts of interests. An "apparent" conflict of interest is one which objectivity *is likely* to be compromised. A "potential" conflict of interest *may* develop into an actual conflict of interest.

With this in mind, consider five types of conflicts of interest identified by political scientists Ken Kernaghan and John Langford (using homeowner association examples):

① **Self-Dealing.** As Board President, you arrange to have your unit painted first even though others need it more or you hire your son to do the HOA landscaping work.

② **Accepting Benefits.** You accept an all expense paid trip to Cancun from the HOA's painting contractor. Money kick backs qualify as well.

③ **Influence Peddling.** A board member asks for money in exchange for using influence to get a particular vendor's contract approved.

④ **Using HOA Association Property for Personal Use.** Usually called "stealing"...taking office supplies and postage or using equipment for a personal project.

⑤ **Using Confidential Information.** A board member discovers a structural dry rot problem that will cost many thousands of dollars per owner to repair. Instead of disclosing the problem, the director quietly resigns and puts his unit up for sale.

How do you determine if you are in a conflict of interest situation? The proof is whether the situation is likely to interfere with your independent judgment as a director. Try the "Trust Test". Ask "Would the owners trust my judgment if they knew I was in this situation?" Trust is at the ethical heart of this issue. Conflicts of interest involve the abuse of trust.

The Trust Test suggests a way of dealing with a conflict of interest called "disclosure". If we disclose what might influence our judgment, others are informed and can be on guard. But disclosure is not enough. Board members are expected to *avoid* conflicts of interests. So in the case of potential self-dealing, the smart director abstains from participating in the discussion or voting.

Since conflict of interest can cloud objectivity, it's often easier to see it in others rather than in one's self. As a precaution, it's wise to speak to a friend or colleague when in doubt.

"Situational ethics" arise when loyalty is split or there are moral concerns that muddle

the decision. “Whistle blowing” is an example of when a director must choose between loyalty to a director (and personal friend) who is embezzling.

Conflicts of interest can rear their ugly head at any time. Be vigilant and prepared to respond quickly and appropriately.

*Excerpts from an article by Dr. Michael McDonald of the Centre for Applied Ethics* 🐼

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### Ask the HOA Expert

**Q** We recently got a professional reserve study done. Our budget committee took the information and plugged it into a spreadsheet that will allow us to postpone the need for a professional study revision. The substitute study changes some of the assumptions, like reducing the recommended reserve contribution and the inflation rate. By doing this, we can lower our annual contributions significantly.

Our reserve study provider has recommended annual updates. What are the pros and cons of updating the reserve study? How would we update our substitute study and how long could we use it and still be confident that it was fairly accurate?

**A** Artificially manipulating the reserve study numbers to reduce contributions for current members is a violation of the fiduciary duty the board has to all members, current and future. When it comes to paying for major repairs and replacements (the main purpose of a

reserve study), there is no free lunch. Shorting reserves today will require making up the shortfall later, usually by special assessment. Special assessments are always unfair to some because they are being required to pay for something that should have been paid for by owners that sold and are long gone.

The other mistake frequently made with reserves is failing to fund each component fully. An example of full funding is a \$10,000 component with a 10 year useful life should have \$1000 per year reserved to be fully funded. Reserving less than \$1000 a year will create a shortfall which must be made up later. But since reserves often include money for long life components like roofing, there is an illusion that there is more money than needed to pay for things in the short term. Boards that fall into the trap convince themselves that reducing reserves by a third, or a half, or two thirds is just as good as full funding. Huh? New math?

In fairness to all members, current and future, and to eliminate special assessments which are unfair to those that have to pay them, full funding of reserves is the only reasonable approach.

Annual updates are critical to keeping a reserve study accurate. The cost of an annual no site inspection update is usually nominal. A site inspection update is highly recommended at least every three years to verify the condition and useful lives of the components.

You should stay out of manipulating the reserve study yourselves. It has obviously been a self-serving exercise so far that is bound to result in a significant short fall. You paid for an objective and professional reserve study and you should follow the recommendations.

**Q** We have a president who solicits co-owner involvement when the board is discussing business at a board meeting. Should co-owners be allowed to

participate in board discussion as if they were a board member? Should a board meeting be conducted like a town hall meeting where everyone can speak? It is my contention that a board meeting is for the board to conduct its business without co-owner input.

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**A** Your interpretation is correct. Board meetings are designed for the directors to discuss and make decisions about HOA business. There are occasions when co-owner input is appropriate but not as a general rule. A member forum should be held prior to the start of the board meeting to allow input and questions. But once the board meeting is called to order, guests are there to listen, not participate. There are a number articles about meetings and how to run them that can be found at [www.Regenesis.net](http://www.Regenesis.net) in the Article Archive>Meetings section.

**Q** I need information on HOA policies and procedures with regards to fining. Can you help me?

**A** Generally, the board has the authority to enact reasonable rules and enforcement procedures.



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They should:

1. Clearly define the issue (parking, pets, failure to pay HOA fees)
2. List the consequences for failing to obey like fines or curtailing use of amenities
3. Describe the appeal process

Fines need to be reasonable. Any rule or resolution that is contemplated by the board should be reviewed by an attorney that specializes in HOA law in your state for compliance with your governing documents, state and federal law. There a number of sample rules at [www.Regensis.net](http://www.Regensis.net) in the Policies section.

**Q** Our board likes to do a lot of business by email so now revising minutes is being done by email. By the time the minutes get back to me (board secretary) they have been rewritten by various board members to change wording or to add items not discussed. The president is the worst offender. My understanding is that minutes are taken and prepared by the secretary. Then, corrections and additions are to happen at the next board meeting. Is this correct?

**A** Minutes should be revised only at a board meeting, not by way of an email circuit. Of course, as secretary, you need to make sure you are taking complete and accurate minutes. There are some things that belong and others that don't. Minutes should record board actions, not discussions. There are many meeting minutes articles at [www.Regensis.net](http://www.Regensis.net) in the Article Archive in the Meeting and Ask the HOA Expert sections.

**Q** Our board has taken to publishing names of delinquent members in the HOA newsletter and board meeting minutes. Is this advisable?

**A** There are many reasons why members don't pay their fees and the solution varies: Millie

is on disability, Joe's Social Security is inadequate, Mary just lost her job, Bill declared bankruptcy, Gertrude has been trying to sell her condo for two years and Arnold is withholding payment until repairs get done on his unit.

What happens if the collection information the board posts is not correct? This kind of misinformation libels someone who may sue for defamation of character.

Your board is ill advised to pursue this collection tactic. It's totally unnecessary and mean spirited. With a properly designed and enforced Collection Policy, there are effective ways for the HOA to get the job done without humiliation. There is a sample Collection Policy at [www.Regensis.net](http://www.Regensis.net) in the Policy Samples section. ⚠

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### Quelling the Quarrel

"Quarrel" has been defined as "the minimum number of people required to hold an argument". One of the many challenges facing homeowner associations is resolving disputes between neighbors. Noise, parking, pets, fences and other territorial imperatives can erupt into all out war with seemingly little provocation. Most conflicts result from a failure to communicate. Neighbors, wanting to avoid confrontation, stew over issues until their emotional pots boil over, usually scalding innocent bystanders.

Conflict is a natural part of human relationships. Self interest almost always outweighs the neighbor's interest. Neighbors become embroiled because interests are at odds. Here are a few suggestions for quelling the quarrel:

**Know What's What.** Some issues belong to the HOA, some do not. Don't get involved unless it affects the general harmony of the community. The board wasn't elected to police neighborhood squabbles so don't take them on. People that can't get along often look for others (you) to blame.

**Let Them Deal With It.** If asked to intercede, suggest they discuss and resolve it themselves. If they won't, so be it. Don't encourage immature behavior by facilitating it.

**Clarify the Issue.** If the issue impacts the whole community, clarify it. What seems to be isn't always what is. Ask each party what they think "it" is. Often it boils down to personality issues that need to be resolved by the conflicting personalities, not by the board.

**Facilitating Discussion.** If the homeowner association's interests are involved, here are several tips for facilitating the discussion:

- Schedule a convenient time to talk
- Agree on a neutral place for the meeting.
- Stick the facts. Steer clear of "He said, she said".
- Avoid blaming, insults and exaggerations which make it difficult to consider other viewpoints. Listen, even if you disagree, to better focus on the issues.
- Defuse hostility. Let them know you understand they are angry or upset. Explore what's behind the emotion.
- Direct the conversation toward solutions.
- Question claims and assertions:
  - ~There are too many/much/little/few... Compared to what?
  - ~ You never...What would happen if we did?
  - ~ We've tried that already... What was the outcome?
  - ~The only way is...Yes, that's one option. Any others?
  - ~ It will never work...What would work?

Good conflict resolution focuses on needs, not positions. Keeping peace in



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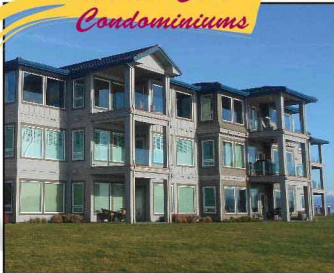
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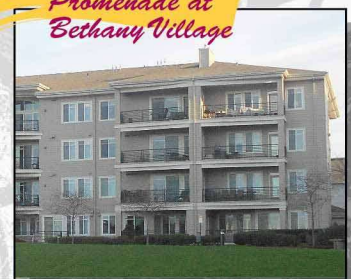
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the “hood” should be a top priority and with the proper approach, you will quell the quarrel.🔪

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## Doctoring the Docs

One of the confusing aspects of homeowner association governing documents (aka CC&Rs or Declaration and Bylaws) is that they are often vague and difficult to understand. Part of the issue is that they are often written in “legalese” instead of plain English. More recent documents are more user friendly but your homeowner association may be stuck with the “whereas, heretofore and witnesseth” style of docs. Gadzooks!

Besides the challenges of deciphering legalese, the governing documents are vague by design to allow customization. Really! In other words, each HOA has the latitude to enact policies as long as those policies are not contrary to the governing documents. The documents grant authority to the board to make policy decisions. (Money policy matters like special assessments sometimes require approval by a majority of the homeowners.)

There are several common issues that should be expanded upon as custom policies:

1. Money Collection
2. Parking Regulations
3. Architectural Design
4. Pet Regulations
5. Rental Restrictions

There are others but these are common to most HOAs. These issues are complex and can’t be addressed by simple “Thou shalt not” rules. They each require a comprehensive definition, method of enforcement, penalties and appeal process. By using

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the Resolution Process, they can be fully explored and developed.

A big benefit of enacting Resolutions is that they don’t require amendment of the governing documents. They don’t modify the governing documents but merely formalize the authority already granted. If the board wants to enact a policy that contradicts the governing documents, the governing documents should be amended by an appropriate vote of the members.

There are times when the governing documents should be amended:

1. **Illegal Provisions.** Older documents may have provisions that are illegal under current statutes. These usually involve issues related to restricting residency because of age, sex, race, familial status, etc.

2. **Unworkable Provisions.** Some well intentioned drafters put money or percentage limits in the documents to control board spending. (Example: “The board shall not spend more than \$500 without owner approval” or “The board may not increase the annual budget by more than 3%.”)

While these limits may have made sense in 1972 (or maybe not), inflation makes them handcuffs instead of restraints. The board needs the authority to set a budget adequate enough to pay for routine matters. Only extraordinary expenditures should trigger the need for general member approval.

3. **Changing Number of Directors.** Sometimes, the number of directors called for is unrealistically high (Example: 7 or 9 directors for an HOA of 30 homes) and finding the required number is a constant challenge. These high requirements should be reduced to 3 or 5 director positions (always choose an odd number to ensure a voting majority).

4. **Bad Drafting.** Unfortunately, some documents have been drafted by people that should be in another line of work.

These folks had neither legal or practical experience and created documents that are confusing or plain wrong.

**Caveat Doctorus.** The board that messes with the documents too much may end up hanging itself. Some things in the documents may be annoying but don’t require fixing. Example: References to the developer which no longer apply once the developer is gone. There is no need to remove or amend these references. Just think of them like an appendix...only remove if really necessary.

**Don’t perform document surgery alone.** While amending documents may seem straight forward, the board should always consult with an attorney that specializes in homeowner association law to ensure that the amendments comply with current statute and common practice. Amended documents need to be properly filed with state authorities to be legal. The attorney knows both the amendment and filing process.

When doctoring the docs, first make sure surgery is needed and then assemble a competent surgical team. Then, only fix or remove what’s necessary to eliminate confusion and to make them “come alive”. Doctor Doctor....please report to surgery.🔪

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## Asphalt Paving 101

Asphalt is the material of choice for homeowner association roads and parking lots. It’s a mix of about 92% stone aggregate and mineral filler combined with 8% asphalt binder. This combination allows it to stay in place and repel water. Because it stays dry, it has the strength to carry traffic loads and lasts a long time. It does, however, have drawbacks:

**February 2020**



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*Lori Rodgers - Bert Rodgers School*

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what HOAs expect from us. It's a real estate management template for success."

*Nestor Correa - Netscore RSource Management*

"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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Poor resistance to the sun, salts and chemicals. Asphalt is a complex mix of thousands of chemicals with predominantly open chain molecules with a high degree of double bonding. Open chained molecules provide easy access for sun, salts and chemicals which breaks them down and destroys their binding and waterproofing properties. The visual indicator of this breakdown is the change of color from dark black/brown to gray.

Poor resistance to petrochemicals. Asphalt is the heaviest and final component of petroleum distillation. The distillation process separates the asphalt from other byproducts like gasoline and oil. Since these byproducts are similar in molecular structure, they easily dissolve chemicals in asphalt.

The drying process. As unprotected asphalt ages, the oils migrate to the surface and are burned off. The pavement eventually hardens and shrinks producing hairline cracking. Cracking allows water to penetrate the water repellent barrier to the ground below which, in turn, causes ground swelling and sinking which causes more damage to the asphalt. Advanced deterioration causes "alligatoring" (cracked surface area resembles an alligator's back), heaving, sinking and disintegration.

Pros and cons of traffic. Major roads have an advantage over homeowner association streets and parking lots because of heavy traffic which continuously "kneads" the oxidized surface back into the pavement bringing up fresh material. After the asphalt binder is exhausted, major roads are either overlaid with fresh asphalt or the pavement is completely removed and reinstalled. Low traffic HOA asphalt do not receive the same traffic loads and must apply different maintenance techniques to preserve the asphalt.

Sealcoating (aka slurry coating) is recommended. Sealcoating uses refined coal tar, a byproduct of coal being converted to coke in steel mills. Coal has different origins than petroleum so has different properties than asphalt. It

has a much more stable molecular structure that is resistant to weather and chemicals. Coal tar is mixed with clay, mineral fillers and water to produce an emulsion or slurry which is easily applied to the asphalt. The mineral fillers give it durability. The coating is both flexible and protects against weather, sun and chemicals.

Sealcoating should be applied even to new asphalt since asphalt begins to oxidize immediately after installation. Thereafter, recoating should occur about every five years (sooner in high traffic areas). Major cracks should be sealed and spot pavement repairs made before each sealcoat application. If sealcoating is done as recommended, the life of the pavement can be extended up to 300%. It also leaves a satin black finish which adds to the beauty and value of the property.

Clearly, asphalt maintenance should be a high priority in every homeowner association that has it. Do your community a favor and contact a qualified paving contractor today for an evaluation. Remember, it's not your fault, it's asphalt. 🐢

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### **Perception of Protection**

Homeowner associations have a responsibility to protect the HOA investment of the members. A person's home is typically his largest investment, thus protecting property value should be a main concern of any HOA board. Perceptions of personal safety influence current residents' decisions regarding relocation and rank high in perspective buyers' relocation choices. When the community is faced with real crime, the board should address the issue by asking several fundamental questions:

Has crime increased resident instability? HOAs can measure resident instability in several ways: residential mobility and owner occupancy. Resident mobility measures the frequency in which residents move in and out, while owner occupancy is a rate assessing the number of resident owners. Combining these two measures provides the board insight about HOA instability.

Has crime affected property values? Criminal activity like graffiti and destruction of property directly reduce the property values.

Has crime affected the quality of life within the HOA? If crime disenchant the residents and they believe the board is not addressing the problem adequately, some will withdraw from social activities or focus on crime issues at meetings.

Community Response to Crime. To identify and measure response to crime, four basic questions may be asked:

1. What is the HOA doing to address crime? There are several crime design strategies that boards can implement such as reduce landscape cover, install better lighting, build fences, Neighborhood Watch Program, security guards and surveillance cameras.

2. How does "perceived" crime influence the HOA's crime prevention efforts? Perceptions do not always relate to the actual amount of crime. And responding to crime does not address the fear of crime. So, it is important to gauge the residents' perceptions to determine whether they approve of the board's response.

3. Is the crime response successful? The board's prevention strategy may fail to meet the objectives. For instance, installation of security lights will not affect daytime burglaries. Security guards can't be everywhere at once. Security cameras may capture an intruder's image but the image doesn't identify the intruder.



# The Regenes Report - Portland/Vancouver Metro Edition

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4. What are the side effects of the crime prevention programs? Some can have collateral consequences. For example, gated communities provide a physical barrier to deter crime, however, residents are required to validate themselves and their guests when entering. In this scenario the individual relinquishes certain freedom for security.

Security is both perception and protection. The board should integrate both when implementing responses to crime.

*Excerpts from Community Associations Institutes Best Practices.*

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Flowing water is time itself unfolding. There is no other place where it's possible to experience so vividly how time moves into the future as on a river. It is not the inexorable march of seconds, each the same as the next, or the hands of a watch ticking away. On a river, time moves because the world flows, now accelerating and then slowing, eddying and swirling to push and tumble ahead, never the same but always downward and onward.


The river is a constant reminder that we are capable of continual evolution, that every shape is only temporary, that time

is always moving, that the world is constantly creating itself anew.

Science suggests that all elements heavier than hydrogen and helium have been through the life of at least one star. The oxygen and iron in our blood, the carbon that is the backbone of our metabolism and life tissue, the potassium and sodium that allow us thought and action, they all have an ancient pedigree billions of years old, born of stellar explosions, of planets dying and being reborn, of life beginning and evolving.

Everything within us has gone through this most epic journey. And through it all, a true miracle, that somehow we are given self-awareness. Over time, everything with us flows like water. Our very being is as transient as the surface of a river.

The river speaks all this and much more. It speaks of time and the currents of the world, of shaping canyons and cutting through continents. Of this instant and eternity. "We are made of dust, and the light of a star."  
*Loren Eiseley*

*Excerpts from an article by Doug Ammons* 

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### **Golf Rules for Seniors**

Rule 9.k.34 - If a tree is between the ball and the hole, and the tree is deemed to be younger than the player, then the ball can be moved without penalty. This is so because this is simply a question of timing; when the player was younger, the tree was not there so the player is being penalized because of his age.

Rule 1.a.5 A ball sliced or hooked into the rough shall be lifted and placed on the fairway at a point equal to the

distance it carried or rolled into the Rough with no penalty. The senior player should not be penalized for tall grass which ground keepers failed to mow.

Rule 2.d.6 A ball hitting a tree shall be deemed not to have hit the tree. This is simply bad luck and luck has no place in a scientific game. The senior player must estimate the distance the ball would have traveled if it had not hit the tree and play the ball from there.


Rule 3.b.3 There shall be no such thing as a lost ball. The missing ball is on or near the course and will eventually be found and pocketed by someone else, thereby making it a stolen ball. The senior player is not to compound the felony by charging himself with a penalty.

Rule 4.c.7 If a putt passes over a hole without dropping, it is deemed to have dropped. The Law of Gravity supersedes the Rules of Golf.

Rule 5. Putts that stop close enough to the cup that they could be blown in, may be blown in. This does not apply to balls more than three inches from the Hole. No one wants to make a mockery of the game.

Rule 6.a.9 There is no penalty for "out of bounds." If penny-pinching golf course owners bought sufficient land, this would not occur. The senior player deserves an apology, not a penalty.

Rule 7.g.15 There is no penalty for a ball in a water hazard, as golf balls should float. Senior players should not be penalized for any ball manufacturer shortcomings.

Rule 8.k.9 Advertisements claim that golf scores can be improved by purchasing new golf equipment. Since this is financially impractical for many senior players, one-half stroke per hole may be subtracted for using old equipment. 

**Tally Hooooooooooooo!**



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**Landye Bennett Blumstein LLP** 503.224.4100  
 David Bennett Steve Russell F 503.224.4133  
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**Rich Thompson**  
 ☎ 503.481.7974  
[rich@regenesis.net](mailto:rich@regenesis.net)



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