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Portland Edition

Innovative Homeowner Association Management Strategies

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Regenesis means making new beginnings using eternal principles in innovative ways.

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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Apples & Oranges

A question that occasionally comes up from the membership is "Why are we paying more per month than (fill in the blank) HOA? They only charge \$____/month."

While this seems like a reasonable question, this is what's called an "apples and oranges" issue. Comparing one HOA's monthly assessment to another's is meaningless without knowing what is actually being paid for. The person that poses this question to the board never seems to have the details, only the bottom line number. What do you say? It's reasonable to respond that the answer requires reviewing the other HOA's actual budget. Ask them to get a copy and the board will consider it during the annual budget process.

There is a variety of factors that can account for differences in assessment levels including:

1. **Age of Property.** The older it is, the more expensive it is to maintain.
2. **Number and Type of Amenities.** A pool alone can increase the annual budget 20%.
3. **Reserve Funding.** Proper reserving requires setting aside 20-40% of the monthly assessment.

There are some things the board should scrutinize during the annual budget process. Past year's expenses should be detailed in a way that trends can be determined. Things like painting, electrical, plumbing, roofing, siding, deck and fencing repairs should be assigned unique categories rather than lumping them into "Repairs-General". Then, if a particular kind of repair cost is significantly higher than expected, an informed decision can be made on how to handle it next year. For example, if broken pipes have significantly increased due to deterioration in similar locations, it's time to consider doing major plumbing repair rather than waiting for the next flood.

Large service contracts like landscaping, management, pool maintenance and janitorial should be reviewed each year. Even if you are totally satisfied with the service received and have no intention of changing provider, it will demonstrate to the membership that the board is practicing due diligence and good stewardship. Also, if a particular service provider is maneuvering for a contract increase, a competitive proposal will work to the HOA's advantage in negotiating or verifying that your current provider is entirely justified in the increase. NOTE: Never change major service providers without major cause. Working with an HOA and its members is not easy and the learning curve is very involved. The HOA is usually much better served correcting deficiencies with the current management rather than starting with a new company that is bound to have its set of own shortcomings.

Some other points to examine:

- Management usually charges extra for preparing unit sale information for sellers, buyers and lenders. Is the HOA paying for it? If so, why? It has nothing to do with managing the HOA. This cost should be passed on to the seller.
- That pool or spa may be used by only a hand full of residents and cost up to 20% of the annual budget. If an appropriate majority can legally approve shutting it down, major money could be saved.
- Has exterior lighting been converted to low watt/high lumen compact fluorescent bulbs which usually pay for themselves in a year?
- Is the board reviewing regular financial statements and approving all unbudgeted expenditures? Without regular oversight, it could be costing the HOA significant money.

Make sure you know what you are spending money for and why. Communicate clearly to the members how the budget was arrived at. What the members really want is reassurance that care has been taken. ☀

Ask the HOA Expert

Q We are publishing an HOA directory containing the names, addresses and phone numbers of all residents. Are we required to contact each resident and ask their permission to publish their information?

A Inclusion in such a list should be voluntary and each resident should provide specific written authorization. The HOA should respect all desires for privacy.

Q Our HOA charges an Initiation Fee to all new owners. Is this appropriate?

A It depends. Sometimes there is a requirement in the governing documents for all new owners to make a contribution to "working capital". There may also be a practical reason for a Move In/Move Out Fee when there are actual related costs incurred by the HOA. This is particularly true in a secure building or gated community where access and elevators must be scheduled, reprogramming done to the entry access system and clean up after the movers. If the fee is justified, it should be commensurate with the actual cost, not a mechanism to make money. Gouging new owners is not good way to begin a relationship.

Q I live in a condominium with seven different unit sizes. There are five large units with two parking spaces each. All the other units are 50% smaller and have only one parking space each. We all pay the same monthly fees. Is this legal? Can this be changed?

A Usually, if there are significant differences in unit square footage and number of parking spaces, the fees are allocated based on a percentage proration. For example, if a unit had 2000 square feet plus 400 square feet of parking space out of a total 100,000 square feet, it would pay 2.4% of the total annual fees ($2000 + 400 = 2400$ divided by $100,000 = 2.4\%$). Similarly, a unit having 1000 square feet plus 200 square feet of parking would pay 1.2% of the total annual fees or half as much as the larger unit.

However, in your case, this issue is moot. If the governing documents divide all fees equally, regardless of unit size or parking allotment, that's the way it is, fair or not. You agreed to it when you bought the unit. Changing it to a "fair" split likely takes 100% agreement of all owners and highly unlikely to happen.

Q I serve on a board of directors with a president that does not like to share information with the rest of us. It seems to be a power thing and most of us are tired of it. What do you suggest we do?

A The president is authorized to make decisions between board meetings that are in keeping with the governing documents, established board policy and approved budget. If the issue falls outside these guidelines, they need to be presented to the whole board for review and decision. If the president continues to act independently, the board majority has the right to remove and replace her with another board member.

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Q Who is responsible for maintaining chimney caps and chimneys? Some board members say that because only some units have fireplaces, those owners are responsible, not the entire HOA.

A If your HOA has exterior maintenance and repair responsibility, that typically includes chimney caps and chimney repairs even if only some have them. The HOA concept is based on sharing costs to save money. Trying to allocate every cost based on level of benefit just doesn't work. The benefit differential is usually considered in the assessment level that each owner pays. If it isn't, it's not going to change because it usually takes 100% of all owners to agree to change it. Better to focus on the big picture. All will profit in the end.

Q Is it possible to deny voting rights or other privileges to delinquent owners?

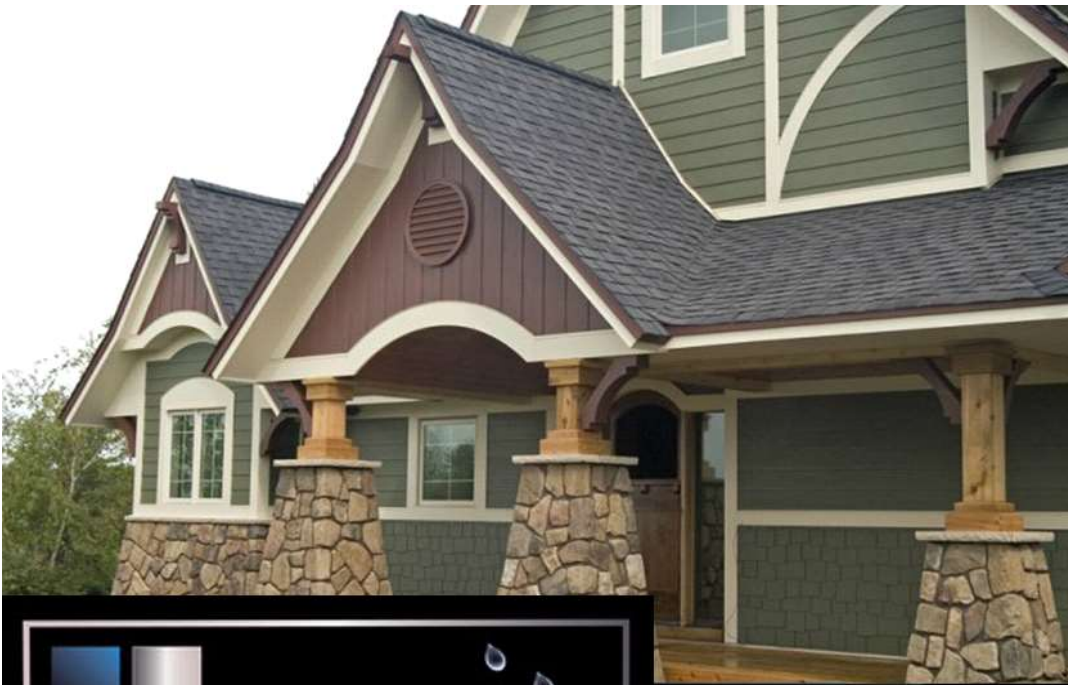
A If state statutes or your governing documents don't state otherwise, the HOA can withhold voting rights and access to amenities like pool, clubhouse and tennis court. But the process needs to be clearly described in a board approved collection policy that is uniformly applied to all delinquents.

Q When the limited common elements attached to each unit (like driveways and decks) vary significantly in size and replacement cost, how are they handled in reserves? Does each individual owner pay into reserves based on his own limited common area?

A "Limited" common element means that use is limited to a particular member as opposed to open for all member use. Decks, patios and driveways are typically "limited" in this way. Unless the governing documents assign costs for limited common areas to the owner, reserves for them are funded the same way as any other common area component.

Q What are your thoughts on "open or closed" session board meetings regarding potential litigation?

A Board meetings should be open to all members. Executive sessions should be reserved for selected topics like litigation, personnel and contract matters. The board should use executive session



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rarely and announce when such is taking place and the general nature of the discussion so that it is clear it's not a violation of open meeting requirements.

Q Does a board have a fiduciary responsibility to file criminal or civil charges when a former board treasurer and long time resident admitted to "using" (but paid back) \$5000?

A From a principle standpoint, filing criminal charges seems like the thing to do. However, it would unlikely further benefit the HOA, particularly if the money has already been recovered. Considering that the person is no longer a board member, nothing more need be done.

It does, however, raise the issue of fraud for which all boards should be ever vigilant. There are a number of fraud prevention practices that should be followed to reduce the possibility of embezzlement including having duplicate copies of the bank statement made available to another board member like the president and requiring two signatures on checks (although the bank will cash them without two signatures). Also, the HOA should have Employee Dishonesty (Fidelity) Insurance coverage in an amount equal to the reserves plus three months of assessment to protect against embezzlement.

Q Since the inception of the HOA, there have been about 44 homes out of the 113 that have a courtyard extending from the front yard to the front door. Usually a low wall and gate separate the two areas. Front yard maintenance is provided as part of the monthly homeowners assessment. Our governing documents specifically state that this care does not extend into the courtyard. However, the HOA has always taken care of the courtyards also.

The board now wants to follow the governing documents and informed the courtyard owners that the maintenance service would be discontinued. Several of the homeowners are threatening to take legal action. The board's alternative is to amend the governing

documents so that maintenance does include the courtyard.

A First of all, the board has no authority to amend the governing documents. That can only be done with an appropriate vote of all members. If given that opportunity, the non-courtyard owners are unlikely to approve such an amendment.

Change of a routine that has been in place for so long should be handled very carefully. It's not surprising that the board has been challenged. When making radical policy changes, it is always in the board's best interest to have a knowledgeable attorney review the matter before moving forward. However, it sounds like the board made a correct judgment to correct the past. It might consider allowing the service to continue with the affected owners reimbursing the cost to do so.

Q The board is meeting tomorrow evening about a delivery truck and resident speeding problem. Some want speed bumps, some want stop signs. Do you have or know of any sources of studies or information on the most effective ways to reduce speed and the drawbacks?

A Installing traffic control is a highly sensitive issue and should be discussed in an open meeting with owners. Is this a general problem or are there relatively few offenders that can be identified? Have the police been called to do periodic speed control? Speed bumps should be your last option and may be illegal because they hinder emergency vehicles. In some cities, a low profile speed bump has been developed which spans the width of the street and is 6 feet deep. The impact is noticeable but not as radical as traditional speed bumps. And they are generally put in series, say, every several hundred feet so that driving more than 25 MPH gets to be a real pain.

There are also traffic circles that cause traffic to slow at intersections and, of course, stop signs. Your local government has a traffic flow expert that could provide the options. 🌳

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Forum for Them

There is a thin line between opening board meetings to guests and having those guests commandeer the show. While most guests should be welcome to sit in and listen, some feel it's their duty to pipe up and give their sage advice or criticism. They even raise their hand when the president asks for a vote. While maybe well intended (and maybe not), guests need to remain just that when attending a board meeting. This means only speaking when requested to speak.

One mechanism for letting guest members have their say is an Open Forum which is held just prior to the formal meeting. But Open Forums need their ground rules. Some guests use them to soapbox, harangue and harass. The Open Forum is designed to allow members to express opinions, ask questions and petition the board in a civilized and orderly fashion. It's up to the president to lay down the rules in advance and cut folks short that violate the privilege.

A fifteen minute Open Forum is usually adequate to accommodate the few guests that attend. The president should ask up front who would like to speak in the Open Forum. Not all do, so establishing the number is important. If three say "I do" than that means each is allotted five minutes. If there are four, that means about four minutes. Announce the time limit and have a board member keep time. The message conveyed to the guest speakers should be "Be brief and to the point. We want to hear what you have to say but have important board business we also need to attend to."

The Open Forum is not designed to examine or debate complex issues or have the board actually vote on a guest's petition. If the guest is bringing a matter of complexity to the board, it should be put on a future meeting agenda and dealt with properly. By so



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doing, the guest can have enough time to address the topic in the detail it merits and can expect a board verdict at the conclusion. Members need to understand this important difference. The board cannot or should not be making shoot-from-the-lip decisions on any subject that cannot be thoughtfully considered. An owner showing up at the Open Forum with an Architectural Change Request he wants approved so his contractor can start tomorrow is a prime example of something the board should not act on. Complex issues take time to study and consider.

An important component of allowing members to attend board meetings is having enough room to actually have them attend. Holding meetings in someone's kitchen does not lend itself to guests. Hold them in a location that allows a reasonable number of guests and provide seating. *Do not* let the guests sit around the board table since this blurs the board and guest functions. The board members should face each other, not the guests. This configuration is important to maintain the board nature of the meeting. A board facing the guests invites continuing interaction and makes it difficult to focus on the agenda.

The Open Forum is a privilege, not a bully pulpit. While a guest should be able to speak freely, it should be done with civility. If not, the guest should be asked to leave the meeting. Letting HOA members have their say is an extremely important facet of living in a homeowner association. Even if they rarely show up, always keep the door open and be prepared to listen. 🗨️

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Ahead of the Game

Deferring maintenance of HOA common elements has negative and lasting effects. While postponing maintenance may seem to be a money-saving technique, the consequences are usually a much higher cost.

Painting is one of the largest elements of routine common area maintenance for many associations. If ignored, a poorly maintained paint finish will lead to extensive costs for the homeowner association at the time such upkeep is eventually completed. The paint on the exterior of any building is a very important component of any maintenance plan. Wood trim should be painted every 3-4 years. The complete painting of buildings should be done every 6-8 years.

Drainage. Rain gutters are an important component of the common area which need twice annual cleaning (more often where there is heavy tree coverage) to help insure proper water run-off. Clogged and overflowing gutters cause premature trim and siding rot.

Light fixtures and poles need to be serviced regularly. Salt air, in particular, can rapidly deteriorate and short-circuit light fixtures.

Concrete sidewalks and slabs need to be inspected annually for cracks and raised areas, as well as degradation of the surface. Raised areas create a trip hazard which can be corrected by grinding or removal and replacement.

Asphalt needs to be repaired and seal coated every 3-5 years to properly protect it so it will achieve its maximum useful life of 25-30 years.

Roofs need to be part of Spring and Fall maintenance plan. They need to be inspected and serviced by a qualified roofing maintenance contractor.

Recreation areas and playground equipment should be inspected and maintained frequently to ensure child safety.

Directional signage should be in good repair and easily readable in order to assist emergency response services like police, fire and pizza delivery. Directories with name and addresses also facilitate emergency response. The directory should be regularly updated for accuracy.

Reserve Study. Completing and annually updating a Reserve Study will help the board to schedule, budget and properly maintain the common elements. It is highly recommended that

the study be done and updated by experienced professionals like PRA (Professional Reserve Analysts) members of the Association of Professional Analysts (see www.apra-usa.com for a directory PRA members).

Use these hints to help craft your own Preventive Maintenance Plan. Deferring maintenance is a sucker bet that will come back to bite. Stay ahead of the game. 🎯

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Think Outside the Box

HOA boards are presented from time to time with a conundrum...a puzzling question that must be solved. These are situations that require the wisdom of Solomon because ramifications are far reaching and complex. In other words, a simple answer just won't do. Take this real life scenario:

A condo owner had a roof leak several years ago and notified the board president who, in turn, called the manager who, in turn, contacted a roofer who, in turn, contacted the condo owner to arrange a repair. While all seemed to have been handled correctly, the roofer never actually *did* the work, so the condo owner stopped paying the monthly assessment several months later when the rains returned and the roof started leaking again.

Late notices were sent by the management and eventually the HOA attorney stepped in. The owner made a few payments then stopped, claiming the leak still wasn't fixed and moreover, the lawyer had treated her rudely. Since it was now summer and the rains had passed, trying to repair a leaky roof was problematic. The owner was told it would be handled when the rains started again.

A new board was elected later that year and soon became aware of the issue, now over a year old. The board made a personal visit to inspect the leak which was in a bedroom closet. A fish tank

was catching the rain water, the ceiling was covered in mold and falling apart. A roofer immediately remedied the problem and the owner was charged for drywall repair.

By now, the condo owner owed \$1200 in monthly assessments, \$405 in late fees and \$870 in legal fees. The owner made partial payment but refused to pay any legal or late fees. The board agreed to waive late fees but wants legal costs reimbursed which were already paid by the HOA. The board is in a conundrum: go to court or compromise?

Withholding assessments is a common tactic some use to make a point with their HOA. It's easy to see how quickly things would get out of hand if every member stopped paying because things weren't going their way. But in this situation, there seems to be a huge disconnect between the owner, board and management. The manager clearly failed to see that the repair was completed. Now, the owner could make a good case that all interior damage should be paid by the HOA due to failure to repair the roof in a timely manner. Further, the mold issue could escalate into a legitimate health issue.

While this owner's methods weren't exactly kosher, under the circumstances, the board should compromise by waiving late charges and attorney fees if the owner brings the delinquency current immediately. This is a case when the board needs to settle the matter amicably before it goes any further (read "lawyers"). While the board should never back off too quickly, there are cases, and this is one of them, where the HOA has clear liability in the events. When that's the case, cut your losses and review the maintenance procedures to make sure it doesn't happen again.

It would be nice if all problems put before the board were cut and dried. But, now and again, a conundrum will present itself. Conundrum solving requires thinking "outside the box" so the HOA doesn't get itself boxed in. ☼

Avoid Self Dealing

When people are elected to positions of power, there is always the possibility that a conflict of interest or self dealing will develop. While there may be no

specific intent, it's sometimes difficult to avoid them. But how they are handled is critical. They come in several shapes and forms such as:

Imbalanced Reserve Repairs. Due to poor reserve planning, the board is called on to make judgment calls based on inadequate money. If the board president approves painting his building instead of others, it would easily be perceived as self dealing, even if that building clearly needs it more than the others. So, while adequate reserve funding could have avoided this situation, the question remains on which building gets painted today. Avoid the perception of self dealing by having an outside "expert" make the call. Rather than be exposed to criticism, why not ask a local paint company design consultant to make the call? This same principle can be used for many other kinds of repairs.

Voting. Another technique for avoiding self dealing is to abstain from voting when the outcome is self-benefitting. And make sure the secretary records in the meeting minutes that "(fill in blank) abstained due to a conflict of interest". That way, the written record will show no intent to sway the vote.

Disclosure. The idea behind disclosure is that any possible conflict is brought to the attention of the board upfront. If the board has no problem with it, it *may* be okay. But beware. Technically, if you advise the board to hire your brother in law, the landscape contractor, you've provided disclosure. However, to an outside observer, there would still be a lingering suspicion of nepotism (hiring family members) or money kickbacks. The board fiddles while everyone else burns. While disclosure may explain away a conflict, look at the situation with a critical eye. If the issue is significant or costly, it's best to shy away from it rather than have to justify it again and again.

Deal Openly. One of the best ways for the board to avoid self dealing is to hold open board meetings. Even if other members don't attend, minutes should be completed in a timely fashion and distributed to all. Regular newsletters (at least four per year) should advise of significant board business and upcoming events. Board

business should be transparent...nothing to hide. If the board knows the owners are watching and aware, it's less likely to engage in self serving activity.

Bash Board Scofflaws. To have a director who is regularly violating the rules is unconscionable. And to allow this kind of conflict of interest to continue invites challenge from every community member accused of rule infraction. Due to their insider status, board member rule breakers should be held to higher standards than everyone else.

Conflicts of interest and potential self dealing always raise suspicion. But no matter how hard you try, one will appear. Ask yourself if something a board member is doing could be misconstrued by outsiders. If so, avoid them at all cost. Trust is fragile so treat it like fine crystal. ☼

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Beautiful Barriers

Robert Frost's poem Mending Wall explores how people with different temperaments and territorial natures are able to cooperate and work together. He sums it up with "Good fences make good neighbors". In common wall homeowner associations, this observation resonates loudly. HOA barriers abound in a plethora of options including chainlink, brick, stone, wood, stucco, vinyl, concrete and siding.

Besides the visual differences of these barriers comes practical considerations. In common wall communities like condominiums, the HOA is responsible for the maintenance, repair and replacement of such structures. Materials like chainlink are inexpensive, have a long life and low maintenance, but aren't very attractive and don't afford privacy. Sided walls are expensive to build and maintain and are subject to dryrot in wet climates.

There is a great alternative which is attractive, low maintenance and long

lived called the "Good Neighbor Fence" (Frost would be proud). This fence is built of redwood or cedar and pressure treated wood (all rot resistant) with alternating boards on each side so that the fence looks the same on both sides. The open weave design blocks views but allows air to pass through for ventilation. This design also reduces the effects of high wind that could damage or blow the fence down.

Leaving the fence unpainted has a number of advantages since painted fences peel and need frequent touchup and repainting. Also, painted wood fences do not last as long as an unpainted Good Neighbor Fence. Cedar or redwood will last 15 to 25 years when properly built and left unpainted. Clear sealer can be applied to help retain the wood color but this does nothing to extend its life. As with any wood fence, the fence boards should have at least 6" clearance from the dirt. The Good Neighbor Fence looks great, is ideal for replacing other types of fences and costs \$15-20 a linear foot. Based on looks, price and durability, this is a seriously beautiful barrier.

Good Neighbor Fence specifications are available to Gold Subscribers. 🗑️

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Greener Grass

A philosopher in ancient Athens was sitting outside the city gates when a traveler came up.

"I wish to live in the great city of Athens," he said. "Can you tell me what it is like?"

The philosopher asked, "Tell me what your home city is like."

"It's an awful place. The people lie to your face, stab you in the back and rob you blind. I have no friends and many enemies."

The philosopher responded, "I'm afraid you will find the same thing here."

So the traveler moved on. Soon after, another visitor approached the city gates.

"I've heard much about Athens and have been thinking of living here. Can you tell what the city is like?"

The philosopher replied, "Tell me what your home city is like."

"It is a most wonderful place! The people are friendly and helpful. No matter where you go, you feel welcome."

The philosopher smiled, "You will find Athens much the same."

Lesson: Finding greener grass won't change the kind of person that you are. 🗑️

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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 birth 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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I have to say over the years that I was in the HOA your insightful, thoughtful and precise information got used more than you will ever know. I got the other members of the board to sign up and use your information as a way to run our group.

Stacey Frank

The Regenesi s Report is a must read cover to cover every month.

Michael Gallagher - Oregon

I love The Regenesi s Report! Very useful information. I cannot wait to get next month's edition.

Jan Simon - Washington

I love, love, love The Regenesi s Report! It seems like you're peering into our HOA every time you write it!

The Regenesi s Report

Rich Thompson

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