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Portland Edition

Innovative Homeowner Association Management Strategies

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Regenesis believes that the goal of every homeowner association board should be to promote harmony by effective planning, communication and compassion.

The Regenesis Report provides resources and management tools for just that purpose. Every month, articles of common interest to homeowner associations nationwide are offered along with innovative strategies for addressing common problems.

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



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Six Rule Rules

Homeowner associations (HOAs) are quasi-government entities that are responsible for maintaining services and shared amenities plus collecting the mandatory fees to pay for them. They also have the power to enforce architectural standards and rules, much as a government would. These rules are created to help preserve and protect the members' property values and enjoyment.

Part of the challenge is that HOA rules can differ significantly from one HOA to another. They can also be more restrictive than rules imposed by local governments. In addition, because the policies can be changed at any time by the board or members, it's often difficult to be certain that the rules a buyer receives at closing are the definitive ones.

Here are some strategies for getting to the bottom of the HOA's rules:

1. Are all rules in writing? While HOAs generally have a set of written rules, some also have unwritten rules that offenders don't discover until they break them. Although the courts usually won't enforce unwritten rules, taking a dispute to that level is costly and aggravating. Buyers should ask if there are any unwritten rules. If the answer is "no", get it in writing.

2. Are the rules specific? A vague rule that's open to interpretation is an invitation to disputes. One particular area of rules where this is common is **architectural design control**. For example, the HOA rules may state that "the board must approve owner remodeling and landscaping projects" but not have any specific criteria for what is acceptable. As worded, this board could reject virtually any request for any reason. If architectural design control is important, the HOA should have a specific policy so those that want to make changes have clear guidance. For a sample, see www.Regenesisset.net > Policy Samples

Another area where vagueness abounds is in **parking** rules that state something like "no commercial or recreational vehicles may be parked within the homeowner association". These kinds of vehicles come in many sizes and types so the parking rules should be very specific about which constitutes

"commercial or recreational vehicles". This often means large commercial trucks and vans, RVs and boats but it could mean much more. Get the board to approve in writing whatever commercial or recreational vehicles are permitted to avoid this potential problem.

Pets are another volatile area of HOA rules. Some HOAs restrict the number, weight, size, type and breed. More HOAs are prohibiting aggressive dogs like Pitbulls, Rottweilers and Dobermans. It pays to ask.

3. Are all rules consistently enforced? If a rule is important, it should apply to everyone, including the board members and their friends. A buyer can inquire with several neighbors about how aggressively rules are enforced and if particular rules are stressed more than others.

4. Do some rules seem unnecessary or arbitrary? If there is a city ordinance to control wandering pets, for example, the HOA doesn't need the same rule. If an HOA has enacted many rules, this could indicate a legalistic and confrontational board which should be avoided unless the buyer is of the same mind.

5. Are penalties for infractions reasonable? If a rule is necessary, it needs to have a reasonable penalty for breaking it. Some boards think the way to control folks is to invoke huge fines for violations. When challenged, courts routinely throw out such fines as "unreasonable". A review of the rules will reveal whether penalties are unreasonable. The only thing worse than an unreasonable penalty is no penalty at all. If a rule has no penalty for violating it, it is no more than a suggestion.

6. What is the appeals process for rule violations? An important part of HOA rules is the ability to appeal. If none is provided, you're left with possibly having to hire a lawyer to defend your interests. Look for language in the rules that allows an appeal to the board.

At the end of the day, HOA rules can have a big impact on a buyer's future enjoyment of the property. A buyer should always make their offer to purchase subject to review of key documents and the HOA rules. 🐾

Ask the HOA Expert

Q Our HOA prohibits guests from using the pool unless accompanied by a resident. We have a resident who is challenging this rule because of an injury which prevents him from doing so.

A Having residents accompany their guests is a standard that should be upheld. If it's not in place, what's to stop a resident from inviting their friends over to swim any time they want? Hold the line on this one.

Q What is the definition of an "executive session"? Can a meeting begin as an executive session and end as an open session or vice versa?

A Executive sessions are closed board meetings where general members are not allowed to attend. There may be a state statute that defines "executive session". If so, you need to follow it. If there is not a statute, the board generally is permitted to hold an executive session to discuss litigation, competitively bid contracts, employee/contractor issues or collection matters involving specific individuals. The board should not abuse this by using it to discuss controversial topics normally discussed in regular board meetings. As a rule, executive sessions should be rare.

Executive sessions can be announced at a regular board meeting when a topic arises that warrants it. The board then goes into private chambers to discuss and vote on the matter and then returns to the public meeting. An executive session can also be scheduled in advance but should disclose the general nature of the meeting so the members understand why the meeting is not public.

Q We have an unmarried resident couple and only the woman is a legal owner. Does her partner qualify to run for the board or serve on a committee? And if they are

legally married but he is not an owner, does that change things?

A In most HOAs, only owners are allowed to serve on the board. You need to read your governing documents to see if that is the case in yours. On the other hand, committee members can be unmarried partners, renters and non-residents.

Q The board is thinking about circulating a survey to evaluate the manager company's effectiveness. Any suggestions?

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A Since the majority of owners are disconnected from the day to day HOA operations and have little understanding of the manager's scope of work, most would not have an informed basis for evaluating the manager's effectiveness. An input form might be more effective. List the various tasks the HOA is responsible to perform in general categories like General Maintenance, Landscaping, Pool, Janitorial, Communications, Newsletters, Rules Enforcement, Financial Reporting etc. and ask for specific recommendations for improvement. If the suggestions are directly related to things the manager should be taking care of, the board has

something concrete to discuss about job performance.

Q Can we publish a list of what each HOA employee makes or is this a breach of privacy?

A Disclosing this kind of information could create animosity between employees or prompt interference from members who feel someone is paid too much or too little. It is something the board should keep confidential. It is appropriate, however, to disclose the total amount of wages/salaries paid in the annual budget.

Q During a week of 100 degree weather, I asked permission from the board to install a window air conditioner. I was denied. I read the governing documents and rules and window A/C units are not mentioned.

My son has a rare disease and a compromised immunize system. His doctor has recommended carefully controlled temperatures (not too hot and not too cold). I can control the cold part but need A/C to control excessive heat. Shouldn't I be able to get an exception due to health reasons? I don't want to have to pay his doctor to write a letter to the board.

A The board should make a reasonable accommodation for this purpose. You should ask your doctor to provide a letter explaining the need for it so the board has the ammunition it needs to make an exception to the rule.

Q Is it permissible for a property manager or board member to go door to door to try to collect past due assessments?

A Sure, but why do it? The HOA has extraordinary collection powers. Ask nicely once. Then send a 10 day notice to pay. If payment is not received, swing the collection hammer using a qualified attorney. Of course, all of this should comply with the HOA's Collection

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Q Our board enacted a security policy that requires guests to show identification to entry gate guards. Do they have the authority to deny my invited guest onto the property? The board never provided notice that they would be enacting this policy.

A Yes, the board has the authority to enact and enforce this policy. Requiring identification is not the same as denying entry. You live in a gated community for a reason...to restrict access to all but invited guests and vendors. This requires certain protocol. While this policy is certainly more restrictive than some, it does deter those with bad intent.

Q Have you ever heard of a board doing a straw poll to see where majority of members sit on a touchy issue?

A Straw polls are not very effective, particularly for sensitive issues, since the poll does not allow discussion of the facts and relevant history. Sensitive issues are bound to set somebody off and create a public relations problem for the board.

If there is a sensitive issue, the board should hold a special meeting to discuss it. Rather than have some rambling discussion, there should be a specific proposal to do such and such. Those that like or oppose it will then have something specific to bounce their ideas off of.

Q We have a member who likes to tell the board how to do its business. He wants one of the directors to read his recommendations at the meeting and have them incorporated into the minutes. Is this something we should do?

A No. If he has something to say, he should attend the meetings. And even if he does, what he

has to say is not appropriate for the meeting minutes. Minutes should reflect board business decisions, not visitor opinions.

Q We have a homeowner who purchased a property and did not receive a copy of the governing documents prior to or after closing. He says that it is management's responsibility to provide these.

A It is not management's responsibility unless that is part of the Management Agreement. Legally, disclosure is the unit seller's responsibility. The fact that this new owner did not receive them does not relieve him of the obligation to adhere to them. His beef, if there is one, should be with the seller or the seller's agent. Management can also provide copies at a reasonable charge or post them to the HOA's website if it has one (highly recommended).

Q Our six member board voted 5-0 to pursue one course of action. A dissenting board member who was not in attendance at the meeting is now undermining that decision with the membership. What can be done?

A The board president should speak to this board member reminding him that he's entitled to his personal opinion but is personally responsible for misrepresenting the board. What does that mean? It's fine for him to state that he did not agree with the vote, but the board is ruled by majority vote. If he continues to undermine that vote, he will find himself marginalized by the rest of the board. ⚠

You Dirty Rat!

Few pests evoke stronger revulsion than rodents. While the manager of an industrial facility may tolerate an occasional rat, not so with homeowner associations. The demand for action is immediate...I mean NOW!

Most people believe that rodents have limited value. Norway rats, roof rats and common house mice live off humans and offer the potential for spreading serious diseases like The Plague by way of fleas and ticks. They consume or contaminate about 20% of the world's food supply. They also like to gnaw, causing expensive structural damage and electrical fires.

Rodents are predictable so a control expert can detect clues pointing to suitable control techniques and when to use them. A successful rodent control program features four key elements:

1) Inspection. This determines the cause of the problem, the species and conditions contributing to the infestation.

2) Proper Sanitation. Trash should be kept in tightly closed containers. Debris and possible nesting materials should be swept up and food items stored in rodent proof containers. Weeds and brush should be trimmed back from buildings.

3) Rodent Proofing The best way to keep buildings rodent free is to prevent them from getting inside. Rodents fit through tiny openings and gnaw through wood, lead, aluminum, copper, cinder block and even concrete. Broken screens around foundation walls are common entry sites as well as damaged siding, chimney caps, open fireplace flues and broken windows.

4) Population Reduction. Where allowed, rodenticides provide the most cost effective rodent control. Modern applications provide a lethal dose in a single day's feeding. Correct bait placement is key to protection for children, pets and non-target animals.

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

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Effective rodent control should maintain high sanitation and an exclusion program which are the keys to success. 🐭

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Elastomeric Paint

Water penetration is a building's worst enemy. Stucco, exterior insulation finishing systems (EIFS), concrete and masonry are prone to cracking and if water penetrates these cracks, serious and costly repairs often result. One great preventive maintenance product for these kinds of surfaces is elastomeric paint.

Unlike traditional paint, elastomerics form a durable, tough film that provides a waterproof barrier to almost any exterior surface. It is a thick, high-fill paint that is flexible and stretchable, so it is ideal at bridging non-structural cracks, joints or defects from hairline up to about 1/16 inch wide. Larger cracks require joint preparation and application of a compatible joint sealant.

Buildings typically need to be painted every 7-10 years and hairline cracks need to be touched up as they appear. However, with regular paint, cracks will come back and may allow for water penetration between touch ups. While elastomerics are more expensive than high-quality commercial and residential paints, they offer superior durability and a waterproof barrier making them a wise choice for added protection.

If a building's weather barrier is intact, water that penetrates the exterior finish should weep out of a properly designed exterior finish system. If there are any deficiencies in the weather barrier, significant damage may result. Therefore, it is imperative to inspect

exteriors and fix any barrier deficiencies. Here is a quick waterproofing checklist:

1. Are there hairline cracks in the exterior?
2. Is caulking and/or joint sealant intact or separating from EIFS or other masonry material? Check horizontally and vertically, and check at the floor line for each floor.
3. Are there water stains or signs of mold near windows, floor lines, ceilings or in the corners?

Damage must be repaired before sealing, or the problem will become worse. If you are unsure about the level of damage, a waterproofing contractor should help you assess the damage and fix the problem.

By Daniel J. Williams 🐭

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Fidelity Insurance

Fidelity insurance protects a homeowner association in the event someone takes the HOA's money and runs. Typically, fidelity insurance will provide coverage in cases of employee theft, theft of money and securities while on premises or in transit, forgery, fund transfer fraud, computer fraud, money order and counterfeit currency fraud, credit card fraud, as well as coverage for the cost incurred to investigate a loss. A fidelity policy is between the insurance provider and the HOA. If the HOA experiences a loss, it will file a claim with the insurer. The insurer will then investigate and

provide coverage for the loss subject to the specific terms of the policy.

Obtaining fidelity insurance has always been a wise business decision but it has recently been made mandatory for HOAs that wish to receive FHA certification. This requirement mandates coverage for all HOA directors, employees, and all other individuals who handle the funds of the HOA in the amount of three months of assessments plus everything in the reserve account. If the HOA employs a management company, the HOA is required to ensure that the management company also has its own fidelity insurance that provides coverage for all employees, officers, and agents who are responsible for management of the funds of the HOA.

Fidelity coverage maintained by a management company is a different type of coverage and will not suffice to provide coverage to an HOA in the event of a loss because the management company's insurance protects the management company from its losses and not the HOA's losses.

One of the differences between fidelity insurance held by the HOA and fidelity insurance held by the management company is who is able to file a claim with the insurance carrier. For example, if a management company employs a manager who steals \$100,000 from a reserve account belonging to an HOA, only the management company can file a claim with its insurance carrier on behalf of the loss suffered by the management company. The HOA has no direct claim on the proceeds of the management company's fidelity insurance. If the management company did not restore the money to the HOA's reserve account for some reason, the HOA would need to file a lawsuit to recover the stolen funds.

Any legal fees incurred because of the filing of the lawsuit would have to be paid by the HOA until a settlement was reached or judgment obtained. If the HOA had its own fidelity coverage, however, it could immediately file its

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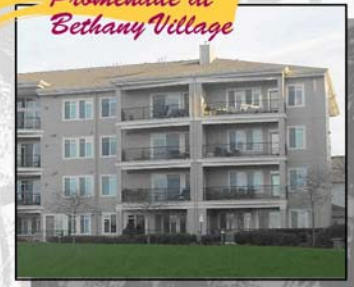
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own claim with its own insurance carrier, which would pay the claim directly to the HOA (but who would turn around and go after the management company's insurance carrier for repayment). The HOA would not have to spend any of its money on legal fees.

Therefore, it is in the best interests for HOAs to obtain fidelity insurance, regardless of any coverage that may be offered by their management companies.

By Molly Lucas 🌟

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Lifting the Veil

In real estate sales, sellers are required to disclose any material fact that any prudent buyer would want to know before completing a purchase. Property located over a toxic waste dump would be an obvious example of disclosure and the need for it. There are less catastrophic issues, like roof condition or a leaking crawlspace but the idea is the same.

Anything that could negatively impact the value or marketability of the property needs to be divulged before closing. While there are usually statutory disclosure requirements of single family house sellers, these same disclosures are generally not required of homeowner association home sellers. This is a huge problem and here's why:

Homeowner associations obligate their members to substantial financial and lifestyle obligations. So, while a buyer may purchase a condo in great condition and needing no repairs, that same buyer is also obligated to share the cost of certain repairs to all the condos, some of which may be in very bad condition. Since there is no specific legal requirements in most states to disclose these obligations, the buyer often finds out after closing when

presented with a special assessment that can amount to many thousands of dollars.

Here's the key to uncloaking this problem: The board of directors controls the quality and quantity of disclosure information. The responsible board treats the HOA like the business that it is and keeps certain basic information available such as:

Governing Documents. Includes the Declaration, Bylaws, Rules & Regulations, Resolutions which are the specific obligations each member has to the HOA and other residents.

Newsletters. Reveal events (renovation, litigation, etc) that could indicate a possible special assessment.

Meeting Minutes. Same as newsletter but with more specifics.

Annual Budgets for Last 3 Years. Could reveal expense trends and/or failure to adjust for inflation.

Financial Reports. Monthly reports comparing actual expenses to budget should be available to track income and expenses.

Collection Activity. How much of the assessments are overdue 30, 60 or 90 days? If some don't pay, guess who gets to?

Litigation Activity. Are there any pending lawsuits that could trigger a special assessment?

Reserve Study. A 30 year plan for HOA maintained components like roofs, painting, paving, etc. This is the biggest time bomb in the many homeowner associations that lack one. Failure to plan for predictable long range expenses often mirrors a lack of ongoing maintenance which causes spiraling owner property values.

Key Contact Information. How to contact the board and manager.

This list of items is the same information that any informed buyer would want. It's the board's

responsibility to make it available to owners so they, in turn, can provide proper disclosure to their buyers. If buyers are informed of their responsibilities, they will make better neighbors. Does the board really want members that don't care how HOA business is handled? Is your board prepared to lift the veil of on disclosure? 🌟

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Calvinball

Calvinball is the name of a fictional sport coined by cartoonist Bill Watterston in his comic strip Calvin and Hobbes which ran from 1985-95. The strip centered around the imagination of a small boy, Calvin, and his stuffed tiger, Hobbes, who came to life in Calvin's imagination. Calvinball first appeared in the May 5, 1990 strip. It is sport where the participants make up the rules as they go along.



But the word Calvinball is now being used in other contexts where the "rules" are constantly changing. True to its nature, Calvinball cannot be restricted and has broken free. For instance, this appeared on Public Radio International in May 2011 discussing the problem of piracy in the Indian Ocean:

Over the past few years, Somali pirates have posed a bigger and bigger challenge to India, disrupting its trade,

capturing its merchants, attacking closer to its shores and—like a game of Calvinball—changing the unwritten rules as they go.

In 2010, some fifteen years after the strip had ended, in a discussion of socialism and the Democratic Party in a comment by conservative commentator Ed Morrissey:

“I can not and will not recommend the original form of socialism because it is unwise in the extreme. To put the whole matter very simply, it would be like going to a highly-charged political protest and trying to organize a baseball game out of participants chosen from the two sides. One would be lucky to have a civil game of Calvinball, let alone anything resembling official baseball.”

Richard Knerr in a January 2008 New York Times expressed a preference for the anarchic sense of play that the cartoonist Bill Watterson depicted in “Calvin and Hobbes” and the crazed game of Calvinball: primitive, wild and playful.

By Dave Wilton ☼

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The Loneliness Within

It is lonely at the top. Leaders know they are ultimately responsible and that the well-being of so many rest in their hands. If they fail, many people will get hurt. Some leaders simply run faster to ignore the mounting pressures.

Who can they share their worries with? It can be difficult to talk with their boards of directors about their biggest problems and deepest fears. Friends outside the organization may not understand the challenges they are facing, and sharing their doubts openly may set off rumors. Sometimes it is

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even difficult to share these concerns with your spouse or mentor.

As a result of this loneliness, many leaders deny their fears. They shut down their inner voice because it is too uncomfortable to hear. Instead, the start listening to the external voices pressuring them, thinking that all will be well if they can satisfy them. But the advice of outsiders is often conflicting or too painful to face, so they choose to listen only to people who reinforce their views.

Meanwhile, their work lives and personal lives grow more unbalanced. Fearing failure, they favor their work life, even saying, “My work is my life.” Eventually, they lose touch with those closest to them—their spouses, children, and best friends—or they co-opt them to their point of view. Over time, little mistakes turn into major ones. No amount of hard work can correct them. Instead of seeking wise counsel at this point, they dig a deeper hole. When the collapse comes, there is no avoiding it.

Who are “they”? They could be one of those executives facing prosecution for their actions or a former CEO forced to resign “for personal reasons”. But “they” could also be you, me, or any one of us. We may not face a plight as

severe as these leaders, but we can all lose our way.

From *True North* by Bill George ☼

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All Who Wander

As a bagpiper, I play many gigs. Recently I was asked by a funeral director to play at a graveside service for a homeless man. He had no family or friends, so the service was to be at a pauper's cemetery.

As I was not familiar with the area, I got lost and, being a man, I didn't stop to ask for directions. I finally arrived an hour late. The funeral guy had evidently gone because the hearse and mourners were nowhere in sight.

There was only the excavation crew left and they were eating lunch. I felt badly and apologized to the men for being late. I went to the side of the grave and looked down and the vault lid was already in place. I didn't know what else to do, so I started to play.

The workers put down their lunches and began to gather around. I played out my heart and soul for this man with no family and friends. I played like I've never played before for this homeless man. And as I played “Amazing Grace”, the workers began to weep. They wept, I wept, we all wept together.

When I finished I packed up my bagpipes and started for my car. Though my head hung low, my heart was full. As I opened the door to my car, I heard one of the workers say, “I never seen nothin' like that before and I've been putting in septic tanks for twenty years.” ☼

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