



# The Regenesis Report



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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## Achieving a Quorum

It's five minutes until the Annual Meeting starts. The governing documents require at least 25% of the eligible voters to establish a legal quorum. With only 21% of the members so represented, the meeting has to be canceled and rescheduled.

This is an all too frequent scenario for HOAs. Many members simply aren't interested or available to attend. It's like pulling teeth to get them to respond at all. Yet, annual meetings are required at every HOA so those in charge of organizing them must make an extra effort to achieve a quorum.

Here are the basic things that can be done:

1. The governing documents commonly require that the notice to be mailed out at least 21 days but not more than 30 days prior to the date of the meeting. So, be conservative and 30 days prior, send out the Notice of Meeting.

2. From this point on, ask every member that calls the office "Have you turned in your proxy yet?" If they have not, offer to fax or email them a new one so they can send it right back.

3. 15 days prior to the meeting send an email blast to all members with a copy of the notice and proxy attached, encouraging them to print the proxy, sign and fax back ASAP. To alleviate any fear that they are "giving away their vote", provide an option that states "this proxy is to be used for quorum purposes only".

4. If the property has a facility like a clubhouse, pool or fitness center that members frequent throughout the day, you should too. Ask each member you run into to fill out a proxy form on the spot.

5. 10 days prior to the meeting, send out a second email blast with notice and proxy form attached.

6. 8 days prior to the meeting, begin making phone calls to all members that have not yet returned a proxy. This is where the rubber meets the road! If you

can catch them at the office, you can suggest sending them a proxy form via email and having them fax or email it right back. This is good for two reasons. About one-in-five that say that they will, do. Secondly, it gives you license to call back those that do not fax back within 24 hours.

7. 4 days prior to the meeting, put out additional signage in prominent location reminding owners to turn in proxies. I have had good results using a sandwich board located at curbside in front of the clubhouse.

8. If you have not achieve a quorum within 48 hours of the meeting, enlist several volunteers to go door to door to collect proxies.

Now for the fun stuff:

Door prizes in the form of gift cards or certificates work well. Some examples include: local coffee shops, fast food outlets and movies. \$10 value will do. Some of the establishments may even donate a card or certificate to promote their business.

Give away items with the HOA's name and logo including coffee mugs, golf/tee shirts, reusable grocery bags and baseball caps. Make the same items available for purchase.

For the crème de la crème - A member need not be present to win. The prizes can be used as an incentive to return their proxy toward making quorum. In this case, you can offer an entry for the drawing to the first "so many" owners to return a valid proxy. If you use this option, make sure to include it in the meeting notice, newsletter, email blasts, and all signage.

Provide food and non-alcoholic refreshments. It seems easier to get a quorum when there are tasty morsels waiting.

Invite an interesting or controversial person to speak at the meeting. Possibilities range from local, state or federal government officials and elected representatives to attorneys, general contractors and engineers who can focus on HOA maintenance or construction issues.

Make the event the HOA's birthday celebration with the annual meeting a brief but necessary digression.

Achieving quorum can be fun – try it!

By Neil E. Thomas CMCA®, PCAM®  
Community Manager

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### Ask the HOA Expert

**Q** Our HOA board has some funds that we want to put into a CD to earn more. The funds are not going to be needed for about 3-5 years. We are currently getting a very low rate of return in a Money Market account but can improve our position by 2-3% by long term CD investing. What are the downsides?

**A** One of the big advantages of a well prepared reserve study is that the board can make informed decisions about investing reserve funds to maximize return on investment. For example, if the reserve study indicates that \$75,000 of the \$100,000 reserves are not going to be needed for five years, the \$75,000 could be invested \$25,000 in a one year CD, \$25,000 in a two year CD and \$25,000 in a three year CD. When the one year CD comes due, the money could be reinvested in a three year CD. In just two years, all excess reserve

funds could be yielding the rates of a three year CD. This strategy is called "laddering". Increasing investment return on reserves will reduce the level of owner contributions. It's a beautiful thing.

**Q** Is it advisable to allow the members to attend board meetings and work sessions? We try to hold a meeting on a monthly basis, some of the attendees can get quite windy, as we give them a chance to express their concerns and wishes. After they are finished, we allow them to sit and listen while we conduct the rest of the meeting discussing budgets, projects, delinquent homeowners, etc.

**A** Board meetings should be open to members. The exception is an emergency board meeting that's required to handle urgent business that can't wait. For standard meeting, it's good to provide a homeowner forum prior to the meeting to allow homeowners to speak and ask questions of the board. It is also prudent to put a time limit on the forum of, say, 15 minutes. The president should ask in advance which members would like to speak and, based on the response, divide up the time among them. And, hold them to it. The board has important business and needs to get to it. Long board meetings is one of the reasons many won't run for election. Respect everyone's time.

Allowing homeowners to sit through the meeting is their right but there are certain topics (like homeowner delinquencies) that are best discussed anonymously (no names mentioned) or in "executive session". Executive session is a meeting closed to owners to discuss highly sensitive issues like litigation, delinquencies, employee personnel matters and contract proposals. If you do insist on discussing delinquencies in your board meetings with homeowners present, names should not be named to avoid libel and defamation of character issues. Same goes with recording names in the minutes.

Work sessions are another matter. As long as no business decisions are made and they are done only for discussion

and gathering information, they can be closed to owners. Formal decisions need to take place at a regularly scheduled board meeting.

**Q** We have had problems with our management company in recent years. They do not respond to questions and have given us a grief over certain issues. How should we handle this?

**A** The management company is hired by and takes direction from the board. The board should do periodic reviews of the management contract which can always be terminated for just cause. The board, if dissatisfied with management's performance, should sit down with the manager and discuss specific issues and come to an agreement on how they will be handled in the future. If the manager won't or can't comply, it's time to find a new manager.

In most cities there are several companies that specialize in this kind of work. The board should develop a Request for Management Proposal which includes a detailed scope of work. (There is a sample Request for Management Proposal at [www.Regenesis.net](http://www.Regenesis.net) available to Gold Subscribers.) Always get references and exam the management agreement carefully before contracting. It's advisable to have a knowledgeable attorney review it.

**Q** I'm a new board member. Every time I want to talk about HOA business independently, the president tells me I can't because I'm on the board. I'm ready to quit so I can have my rights back.

**A** It all depends about what you mean by "talk about". If you are lobbying the homeowners regarding issues that the board has ruled on, it would not be appropriate for you to circumvent the board's authority. A house divided against itself cannot stand. The board has authority to make decisions and enact policy as authorized under the governing documents. If you are involved with matters outside the board





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authority, you have the right to do so as would any private citizen.

**Q** My neighbor made a verbal request for a fence installation and got a verbal approval from the board the next day. I wanted to install essentially the same thing at my home but was told I had to submit plans for approval. What should I do?

**A** Homeowner associations often have architectural guidelines that must be followed. Part of the approval process is to submit written plans, name of contractor and other details for review. If there are architectural standards, all should be given written approval so the record is clear that there has been no favoritism. The requirements should be in your governing documents. If you don't have a set, ask the board to provide you with one.

Rather than waste a lot of emotional energy on fighting the issue of whether verbal or written approval is required, you should submit a written request. The board is required to respond within a reasonable time like two weeks. (If there is no time limitation in the guidelines, ask that they respond within two weeks.) If they fail to respond in a timely way, move ahead with your plans making sure to have all permits required.

If you are denied by the HOA, get the reasons in writing. If you are denied unreasonably, you have the right of appeal.

**Q** One of our biggest problems is getting members to participate and pay their assessments. Any philosophy about these two issues?

**A** Few folks want to volunteer for a board that has no business plan and even fewer want to pay for something they're not getting. Essentially, it boils down to a philosophy of running the HOA like the business that it is. The board is often entrusted with millions of dollars of assets yet many manage those valuable assets by crisis instead of by design. Most HOA business can be planned

for. If the board adopts a philosophy of long range planning, a realistic budget and regular communications with the members, harmony will result. 🏡

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### **Falling in the Cracks**

When faced with a homeowner association maintenance or repair issue, the starting point is to determine whether the HOA has the duty to maintain or repair. This may not be as simple as it sounds. While the governing documents generally define the common elements and repair responsibilities, sometimes the item in need of repair may fall into a gray area. For example, while the governing documents may state that the HOA has the duty to maintain the floor between unit levels, what happens when a unit owner requests that the HOA fix his squeaky floor? The answer depends: Is the squeak related to a structural problem or the hardwood flooring installed by the unit owner? If it's a defect in the structure, the HOA fixes, if the flooring, it's typically on the unit owner.

To sort this all out, it is helpful to create a matrix that can serve as a quick reference guide for determining the maintenance and repair responsibilities of the HOA versus owner. The matrix should conform to requirements of the governing documents. (For a sample Areas of Responsibility Policy, see [www.Regenesis.net](http://www.Regenesis.net).)

When it comes to repair requests, the board should have a standard policy of prompt action prioritized by urgency: a broken pipe is urgent, a squeaky floor much less urgent. Sidewalks that are heaving and creating a tripping hazard require quicker action than scheduling the repainting of signs or buildings. Reaction time should fit the situation. If not urgent, repairing within a few weeks is reasonable.

The importance of prompt response was made clear by a jury verdict in the Los Angeles Superior Court in the case of *Mary Jamison Moller v. The Atherton Homeowners Association*. The jury found the HOA liable for \$495,000 in water damage to a resident's unit. The resident had made repeated complaints to the board of water damage, mustiness and moistness in her unit.

The board failed to act for three years, when an architect was hired to design a drain system to alleviate the problem. By then the unit condition had grown worse and the new drain system was not installed properly. The resident developed health problems, allegedly because mold and mildew began to grow inside the unit's walls. Among other things, the jury found that the board was negligent and had breached its fiduciary duties. The resident was awarded damages for pain and suffering and the trial judge ordered the HOA to raise \$250,000 to pay for repairs to the unit.

How soon should a board take action to make a repair? At least one court has held that an HOA must perform a repair within a "reasonable time". What constitutes a "reasonable time" depends on the circumstances. In *Lemon v. Golf Terrace Owners Association*, the Supreme Court of Alabama found that the HOA acted within a reasonable time when it took over three years for a re-roofing project. The resident in that case had a serious roof leak in his unit and sued the HOA for failing to fix it within a reasonable time. The roofs in the project were over 16 years old and defectively designed.

More and more roofs began to deteriorate and leak. The board appointed a committee to develop a plan to deal with the roof problem and an architect was hired to prepare a design. The board was constrained in its actions, the Court noted, because it was required by the governing documents to submit the new design for a vote of the owners. Once approval was obtained, the board then had to secure competitive bids from roofing contractors, one of which then had to again be submitted for owner approval.



## THE REVIEWS SAY IT ALL

"This practical yet insight-book covers the myriad of topics that board members must juggle, providing concrete solutions that can be implemented immediately."

*Lori Rodgers - Bert Rodgers School*

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

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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!"

*George Burns - Board President*

Trade HOA Stress for Success is available for purchase at [www.Amazon.com](http://www.Amazon.com) in hardcopy or Kindle versions.

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The Court expressly acknowledged that "the delay in the construction appears to have resulted from the fact that the board governing documents for making extensive had to follow the procedure set out in the structural alterations to the roofs. The record affirmatively shows that the board took the owner's problem seriously." The Court then went on to document extensive efforts undertaken by the HOA to try to stop the leaks in the owner's unit while awaiting construction of the new roof. So, as long as the board's repair efforts are constrained by the governing documents, "reasonable time" could be months or even years.

It has long been presumed that the "business judgment rule" would usually insulate a board from liability for a business decision made in good faith, so long as the board members acted on an informed basis, were disinterested and independent, and were reasonably diligent in informing themselves of the facts. However, a dent was placed in this "shield" from liability by a California appellate court in *Lamden v. La Jolla Shores Clubdominium Homeowners Association* (1998). In that case, the complex experienced a major termite problem and an exterminator recommended fumigation to control it. The board decided against fumigation and decided to spot treat the infested areas. A unit owner sued alleging that the HOA should fumigate instead of spot treat. The board defended the lawsuit by stating that its conduct was in conformity with the "business judgment rule", and the trial court agreed, holding that the board had acted in good faith and had a rational basis for the decision to reject fumigation.

On appeal, however, the trial court's decision was reversed. The appellate court essentially held that the "business judgment rule" is not the applicable standard when reviewing maintenance and repair decisions. The court reasoned that the HOA was "for all practical purposes" the complex's landlord, and must, therefore, exercise due care for the "tenant's" property. The court stated that this relationship between the HOA and the unit owner required that the HOA was to exercise due care to protect the co-owner's unit

from undue damage. The court held that the board's conduct should be scrutinized under a standard of reasonableness rather than good faith. Accordingly, boards should also consider whether their maintenance and repair decisions are reasonable and prudent, in addition to being made in good faith and represent an informed business judgment.

Like other duties, the board must take its maintenance and repair duties seriously and take prompt action when possible. Neglecting a needed repair can have deleterious consequences. To avoid a problem with funding repairs, the board should also set aside adequate reserves. If a board acts diligently, does so in good faith, while being well informed, it will significantly reduce any legal claims that it did not live up to its obligations. ☹

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## **Reserve Study Updates**

A reserve study is a homeowner association's essential long range planning tool. It charts a schedule for the board to follow for major repairs and replacements (paint, roofing, etc.) and forecasts a budget for each event so the board can set aside money (reserves) each year so adequate funds will be available when the various events come due. It's an amazing tool that takes a lot of guess work out of the board's job.

Even though a reserve study makes funding projections up to 30 years away, the premises upon which those projections are founded are ever changing. Each year, the inflation rate changes as does the yield on invested funds and the starting balance in reserves. These three moving parts

alone can have a dramatic impact of costs and reserve fund balances years away. But there are other forces at work. The cost of labor changes from year to year based on a hot or cold real estate market. Cost of certain materials changes from year to year. Oil based products are particularly volatile and pricing affects roofing and paint. Wood products fluctuate as well.

The reserve study typically predicts future costs based on current costs adjusted by inflation. Revising the reserve study when actual costs are incurred is essential since those costs are the most accurate available. If painting was predicted eight years ago to cost \$1500/unit and the current year's actual cost is \$1650/unit, the reserve study should be updated to that cost.

The question often comes up "How much money should we put into reserves each year?" The answer varies from HOA to HOA based on the number and age of components. But at each HOA, there is an amount of money which represents "fully funded" each year. Say your reserve study only has one component worth \$10,000 that has a 10 year useful life. To be fully funded, \$1000 should be reserved each year so, for example, in Year 3 there should be \$3000 in reserves.

If that same principle is used for each component according to its useful life, the HOA will always be fully funded and every member will have contributed a fair share based on time of ownership. If anything less is set aside, some member(s) in the future will be required to make up the shortfall. This is unfair to them and the board has failed in its fiduciary duty to protect the interests of all members current and future.

Due to the problems caused by subprime mortgage lending, major mortgage loan underwriters like FHA (Federal Housing Administration) require condominium associations to be FHA approved before FHA loans are processed. One of the many conditions of FHA approval is a reserve study that is current within 12 months. Certain states like California, Oregon and Washington have additional reserve



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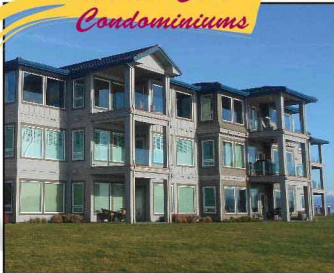
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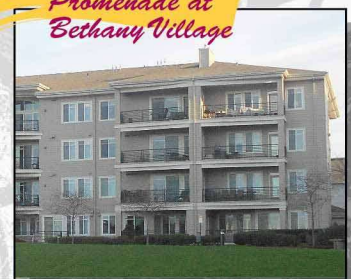
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study requirements that address annual updates.

Whether for practical, banking or legal reasons, having and updating a reserve study each year will keep the board informed, help maintain the most financing options for the members and in compliance with state statutes that apply.

If your homeowner association has had a professional reserve study done, make sure it is updated every year and remember to include the cost of the update in your Operating Budget so it won't be overlooked.

The reserve study is one of the most indispensable planning tools that an HOA can have. Not having one is like steering a ship without a rudder. If your HOA has not had a reserve study done, put it on the Must Do List. 🐘

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### Myth of Self Management

There is a myth that has survived for decades that the business of a homeowner association (HOA) should be handled entirely by the board without assistance from professional management. That myth is anchored in the belief that money is saved and that there is better control.

Curiously, the myth was hatched by HOA developers who had a clear conflict of interest and profit motive: If the board does the work for free, monthly fees can be reduced. If the fees are lower, the developer can command higher prices. So, developers profited from the myth and there was nothing in the law to stop them from doing it.

The myth of self management is just that...a myth. The reality is that managing an HOA demands a high degree of expertise. Property management is very difficult even under ideal circumstances when there is

an iron clad lease with strong enforcement provisions to control the tenants. But HOAs are populated with *owners*, not tenants. Owners can't be evicted for breaking the rules or nonpayment. Owner standards and demands are much higher than the typical tenant's. And an HOA manager needs the diplomacy skills of Henry Kissinger and the skin thickness of a rhino.

Sooner or later, self managing boards discover that they've been bamboozled by the myth and that self management is neither easy or fun. But changing to professional management seems next to impossible as the non-board members chant "We've never done it that way" and "Professional management will cost *money!*" The longer an HOA practices self management, the harder it is to go pro. It's like turning an oil tanker...but turn you should.

Consider that the board is entrusted with most members' biggest asset, their home. To properly maintain this cherished possession requires effective long range planning and broad knowledge of construction and building maintenance. This expertise is rarely found on a volunteer board. Lack of planning inevitably leads to lack of money which leads to lack of maintenance which leads to eroding market value and livability. Yikes!

Consider the two most emotional reasons that even the smallest HOAs should be professionally managed: Money and Rules. No neighbor should have to collect money from or enforce rules on another neighbor since the actions are predictably confrontational. Yet in every HOA, both of those situations will eventually become a reality. What then?

When it comes to professional HOA managers, the list is usually short. So it's important to carefully pre-screen the candidates. The kinds of tasks they perform are numerous so prepare your task list (Request for Proposal) before you interview. The scope of work directly drives the cost.

While professional HOA management clearly costs money, it will reduce

internal conflicts and improve maintenance which will be returned in increased market value. Many HOA management companies offer different levels and costs of management to allow all HOAs to participate at some level. Equally important, the HOA board will come closer to that "carefree living" the developers marketed. Look into it and make self management a thing of the past. *There is a sample Request for Proposal available to Gold Subscribers of [www.Regenesis.net](http://www.Regenesis.net)* 🐘

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### Blue Light Special

There is a great expression for giving the customer what he wants: "If the man wants a blue suit, turn on the blue light." This wisdom is based in the phenomena that perception is often more important than substance. As any successful salesperson knows, the sale is in the bag if the customer thinks it's his wise decision making at work, not "being sold".

This same philosophy can assist in the recurring and vexing issue of what color to paint the buildings. There is no greater political football than paint color and every time the board moves to make a change, a donnybrook ensues that sends it packing back to the old color scheme.

But there are often compelling reasons to change: The 70s colors never worked, even in the 70s. Besides being a color consultant's worse nightmare, those dark colors absorb heat and cause premature failure of the paint. Since one thing leads to another, paint failure leads to a shabby look and premature failure of the trim and siding. And this means big money to make repairs. Ouch!

To dodge the politics of paint, the board should defer to a design consultant from a local paint supplier. On the premise that the HOA will buy



# The Regenes Report - Portland/Vancouver Metro Edition

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its paint, most companies will provide consulting services for nothing, zero, zip, nada (a very good price). Ask the consultant to recommend three contemporary body and trim color combinations suitable for your buildings. Ask also for recommendations of how trim should be painted for a contemporary look. The painted trim combinations of yore are often glaringly old fashioned and detract from value. A new trim look with cutting edge colors can fast forward the curb appeal.

Have the consultant prepare these trim style and color recommendations in a side by side color board and hang the board on a sunny building wall (or paint the wall itself with the three recommendations) so that residents can see what the "experts" recommend. Have them vote on the combination they prefer. Majority wins.

If your project is large enough to justify a multiple color schemes, let the residents of each building decide which color combination they want for their building. Again majority wins.

Using an outside color consultant removes this political football from the board's hands and helps keep the peace. Letting the residents choose gets them invested in the result. Remember the Blue Light Special. It works. ☹

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### Lighten Your Load

A lecturer was explaining stress management to an audience, raised a glass of water and asked, "How heavy is this glass of water?" Answers called out ranged from 8 to 16 ounces.

The lecturer replied, "The weight doesn't matter. It depends on how long you try to hold it. If I hold it for a minute, no problem. If I hold it for an hour, I'll have an ache in my arm. If I

hold it for a day, you'll have to call an ambulance."

"In each case, it's the same weight, but the longer I hold it, the heavier it becomes. And that's the way it is with stress management. If we carry our burdens all the time, sooner or later we won't be able to carry on."

"As with the glass of water, you have to put it down for a while and rest before holding it again. So, before you return home tonight, put the burden of work down. Don't carry it home. You can pick it up tomorrow."

"Whatever burdens you're carrying now, let them down for a moment. Relax and pick them up later after you've rested. Life is short. Enjoy it!" ☹

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### Synthetic Words

Bozone: The substance surrounding a stupid person that stops bright ideas from penetrating.

Giraffiti: Vandalism spray painted very, very high.

Sarchasm: The gulf between the author of sarcasm and the person who doesn't get it.

Inoculate: To take coffee intravenously when you are running late.

Hipatitis: Terminal coolness.

Osteopornosis: A degenerate disease.

Karmageddon: Its, like, when everybody is sending off all these really bad vibes, right? And then, like, the Earth explodes and it's, like, a serious bummer.

Decafalon: The grueling event of getting through the day consuming only things that are good for you.

Glibido: All talk and no action.

Dopeler Effect: The tendency of stupid ideas to seem smarter when they come at you rapidly.

Arachnoleptic Fit: The frantic dance performed just after you've walked through a spider web.

Beelzebug: Satan in the form of a mosquito that gets into your bedroom at three in the morning and cannot be cast out.

Caterpallor: The color you turn after finding half a worm in the fruit you're eating.

Diplomacy: the art of letting someone have your way.

Vegetarian: Indian word for bad hunter.

You don't know what you have until it's gone. For example, toilet paper.

Heaven won't take me and hell's afraid I'll take over.

I'm objective; I object to everything.

Abandon the search for Truth; settle for a good fantasy.

When all else fails, lower your standards. ☹

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