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Portland Edition

Innovative Homeowner Association Management Strategies

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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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Rule Enforcement Guide

One of the functions of a homeowner association (HOA) is to enforce certain rules and covenants. It's good to periodically review old practices and check against established norms to confirm that your HOA runs a sound enforcement program.

It is the board's fiduciary duty to enforce the rules but the board has some latitude when and what to enforce based on its best business judgment. The key is for the board not to be selective, arbitrary or capricious in how it handles enforcement. It is impractical to expect that a board can maintain absolute vigilance and catch each and every rule violation. Instead, the board should react when informed by a reliable source.

Here is a list of the typical remedies available to an HOA that seeks to enforce its rules:

1. Impose a Fine. This power is typically derived from the governing documents. A fine could be monetary or a suspension of privileges like pool or clubhouse. Of course, suspension of privileges is only effective if the member actually uses the amenities. Monetary fines can be escalating (like \$5/day until cured).

2. Impose a Lien. If a fine is not paid, the HOA usually has the right to file a lien against a member's HOA property. This may not immediately get the fine paid but in most cases, the *threat* of filing a lien alone will. The HOA is usually entitled to reasonable attorney, collection and related fees as well which will increase the amount owed. This is also a great incentive to getting the fine paid early.

3. County Court or District Court. The HOA is always represented by an attorney since these courts have rules

and procedures which only lawyers understand. Court litigation is expensive and should not be undertaken lightly. Make sure the expense and effort fits the crime. We've all read about the time, emotion and money squandered on "matters of principle". The board has the power to compromise when it's in the best and financial interest of the HOA.

4. Self-Help. In certain circumstances, the HOA can self-help by correcting the violation. Examples include hauling a junk vehicle, cleaning up an overgrown lot and removing a violating fence. Rather than ratcheting up legal and collection fees, it makes sense to take action and bill the offending member which, granted, may require legal action to collect. Even so, at least the offending issue is dealt with. If self-help is contemplated, make sure to keep copies of all correspondence that outlines that option if the member does not respond. Take photos of the offense for the record as well.

5. Mediation. Mediation can be very cost-effective and less confrontational way to cure a violation when a member has dug in their heels. Mediators are trained in the art of compromise. Many jurisdictions provide mediation services free or cheaply.

6. Using the Police. All municipalities have ordinances against inoperable vehicles, disorderly conduct, disturbing the peace, etc. The HOA should always consider contacting the local authorities when handling certain violations as these agencies are better equipped and authorized to deal with some matters. At the very least, the HOA should maintain a good rapport with local law enforcement and government offices and cooperate with them when these entities are brought in to investigate a resident's misconduct. ☹

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Ask the HOA Expert

Q What do you think about placing a time limit on the board meetings? There are some members that believe that there should be no time limit.

A Generally, board meetings should not go longer than two hours. This seems to be the average time limit for sustained human concentration. Board meetings should always have a set agenda together with proposals, information and recommendations circulated in advance to the directors for review. In other words, the directors should not arrive at the meeting cold and clueless. They should have a good idea about the topics of discussion and be prepared only to clarify the issues before an up or down vote. Board meetings should never involve rambling discussion. Board meetings are intended to transact business. Stick to the agenda, get business done and adjourn the meeting in two hours or less.

Having short board meetings is an effective recruiting tool for good board members. Successful business people value their own personal time and will be more inclined to volunteer if the meetings are run in a businesslike way.

Q In our HOA, many of the original old wooden fences need to be replaced. The governing documents address fence design and material

but do not mention height. The board has issued fence guidelines which state that the maximum height is five feet. Some of our members have challenged the board's policy since they want a six foot fence.

A Architectural and design policies like fences are often enacted by the board. If the board has a reasonable basis for setting the five foot limit (like that has been the standard for years), it has every right to do so. The fact that some may not agree is no surprise. Welcome to America. But the board has the authority to set such policies and amend them later if there is a compelling reason to do so.

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Q Our HOA has a strict policy in order to preserve the streetscape and prevent clear-cutting. The board gets requests from time to time from members asking permission to cut trees. We will inspect and sometimes approve the cutting if there is disease or damage. If not, the requests are denied.

We now have a resident who is requesting to cut two tall pine trees that are close to his house due to the potential of the trees falling. He is stating that the HOA will be liable if the tree falls. Is the HOA exempt from such liability if the governing documents state that significant trees cannot be cut?

A Besides the falling tree issue is the potential fire hazard. Trees should be located at least 30 feet from the structure, especially if they are highly flammable like pine trees. There is also the issue of tree limbs damaging the roof and the trees causing foundation damage when they sway in the wind.

But to address a specific request, it would be prudent to get a licensed arborist to review the trees in question. If the arborist believes they are a danger, they should be removed. Otherwise, they should not. The board is not responsible for acts of God, only for handling business in a prudent manner. Use experts to your advantage.

Q Our pool and clubhouse are 15 years old. The board wants to build a larger pool and upgrade the clubhouse which would require a \$200,000 special assessment and drain our reserves.

A The board has no authority to expand the common area amenities. Its authority is to maintain existing amenities in good condition. However, if an appropriate majority of the members are in favor of raising and spending this money for this purpose, that is acceptable. However, the "appropriate" majority may be a super majority of two thirds or more depending on how your governing documents read. This requirement could effectively kill the proposal.

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Q We did not have a quorum at our last annual meeting. So, the manager passed out blank proxies for people to sign just in case they couldn't attend the rescheduled meeting. When I asked who would be the appointee for the proxies, I was told that they would be divided among the board members. Is this the way it is usually done?

A Proxies should have been distributed and collected in advance of the *original* annual meeting to ensure there was a quorum. It's up to the board and manager to make sure those proxies are collected before the meeting to make sure a quorum is secured, not simply hope enough people show up. Getting members to return proxies in advance takes persistence but is extremely important.

As far as the proxy process itself is concerned, a member has the right to designate a representative to act on their behalf at an annual or special member meeting. If that member either does not select a representative or the chosen representative fails to attend the meeting, the proxy could include an alternative to allow "one of the directors of the board" to vote on their behalf. If a member isn't comfortable with a board member voting, the proxy should include another alternative which states "If my designated representative fails to attend the meeting, this proxy is to be used for quorum purposes only." This way, the show can still go on. For a sample proxy, see www.Regensis.net Forms sections.

Q Safety is a large concern in our HOA. One of our residents wanted to arrange for a Neighborhood Watch representative to speak at the annual meeting. The request went to the manager who said that the board had to approve a speaker. Weeks later,

she claimed she could not get a response from the board. Does the board really need to approve a speaker?

A Every meeting should have an agenda that is noticed in advance to all attendees. The typical annual meeting agenda template looks something like this:

- I. Call to Order
- II. Establish a quorum
- III. Approve previous annual meeting minutes
- IV. Officer and Committee Reports
- V. Election of Directors to the Board
- VI. Unfinished Business
- VII. New Business
- VII. Adjourn Meeting

Since this is a business meeting, the typical agenda does not provide for speakers. However, if there is a proposal under New Business to, say, Improve Security Using Neighborhood Watch, it is entirely appropriate to include a short presentation to reinforce that proposal. In other words, if the speaker is relevant to the business meeting, it should be allowed.

That said, you do have the right to request time for a speaker. Your manager failed to address the request. "Not getting a response from the board" is a lame excuse. The board president is the one that approves the agenda. You could have called that person directly to discuss it and should do so in the future to avoid the bureaucratic bottleneck.

Q Our condominium has a member that is eight months delinquent in HOA fees. He says he has declared bankruptcy, but he has renters in his unit and is collecting rent every month. The renters use the facilities and utilities (gas, electricity, water,

trash). Is there anything the board can do when someone has declared bankruptcy yet is collecting rent every month?

A Yes, there is a lot the board can do and the sooner the better. The board needs to enact a comprehensive Collection Policy which allows "assignment of rents" from delinquent landlord owners. The Collection Policy could also include interruption of HOA provided utilities in the event of delinquency. The HOA would have to have individual utility unit shut off capability but this is an extremely effective way to get the attention of the unit owner.

If the board is going to enact a new or amended Collection Policy, it should be circulated to all members in advance with a notice that it is going into effect on such and such date. This may encourage delinquent members to pay up before it does.

And the board should identify and work with an attorney that is knowledgeable in HOA collections to deal with delinquencies in the early stages. If this member has truly filed bankruptcy, the bill may be difficult or impossible to collect. A basic of all HOA collection policies is to act early and aggressively to secure the HOA's debt.

A sample Collection Policy is available at www.Regensis.net 

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10 Misconceptions About Robert's Rules of Order

There are a number of misconceptions being bandied about how Robert's Rules work. Here are ten of them as they apply to homeowner associations.

1. *The only time the president can vote is to break a tie or in an election.* The president is both an officer and director of the board. As a director, the president has a fiduciary duty to vote on all issues properly before the board.

2. *A director may abstain from voting on an issue.* A director may only abstain from voting if there is a legitimate conflict of interest related to the issue being considered. An example of a conflict of interest would be if the board was considering hiring the director's spouse to be the HOA manager. When abstaining, a director must state the nature of the conflict for the record.

3. *An abstention counts as a "yes" vote.* An abstention does not count as a "yes" vote and is not counted at all. If the board is deadlocked because of an abstention then there is no majority and the motion fails.

4. *The board may use secret ballots to vote on any issue they deem appropriate.* The only time it is appropriate for secret ballots to be used is when the board is electing the officers.

5. *General members do not have the right to speak at board meetings.* While some states have statutes that affect this issue, generally speaking the board may adopt reasonable rules governing the frequency, duration, and manner of owner statements. It is recommended that the board provide for an owner forum so that owners can make statements and ask questions of the board.

6. *All motions must be seconded.* Most motions need a second in order to be considered by the board. However, some motions do not need a second including: point of order (point out a rule violation to the chair), a call for division (requesting a voice vote be verified by having members raise their hands), point of information (requesting more information about a topic under

debate), and objections to consideration of a particular matter.

7. *All motions are debatable.* Types of motions that are not debatable include motion to adjourn, motion to table an issue, motion to end debate on a main motion, point of order, a call or division and a request for information from the chair.

8. *All meetings must be run according to Robert's Rules of Order.* There is no law that requires HOA boards to use Robert's Rules. Sometimes, however, the governing documents will require use of Robert's Rules. But this does not mean that every technical rule must be followed to the letter. Robert's Rules provides that smaller assemblies may operate with less formality. Regardless of what degree of formality the board uses, it is important to be consistent.

9. *Without a quorum, nothing can be done.* In the absence of a quorum, the board or the members at a members meeting may not transact business but they may take measures to establish a quorum, fix the time to adjourn, adjourn, or take a recess.

10. *The board can exclude members from attending the board meeting by holding an "Executive Session".* A board may meet in "executive session", exclude members and keep the proceedings secret but the subject matter is very narrow. Topics appropriate for executive session are discussion of competitively bid contracts, personnel matters and proposed or pending litigation. Using an executive session for other normal topics is not allowed.

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Director Code of Conduct

As a member of a volunteer homeowner association board, it's useful to codify the goals and behaviors an effective director should seek in a Code of

Conduct. It not only serves as a constant reminder for those that are serving but can also help screen out candidates with hidden agendas. Consider adopting something like this:

As a director serving the interests of my homeowner associations, I agree to:

Act in the HOA's Interests. Directors will strive for the common good of the homeowner association, foregoing personal interests. Personal agendas will be left at home.

Engage in Lawful Acts. All board actions will comply with the governing documents and the law. To accomplish this requires thoughtful deliberation and input of knowledgeable professionals.

Maintain High Standards of Conduct. Directors conduct should be above reproach and avoid the appearance of impropriety.

Demonstrate Mutual Respect. Directors will address each other and homeowners with respect, even when in disagreement.

Attend All Board Meetings. Effectiveness is based on keeping informed and making informed decisions. This is made possible by attending meetings where decisions are made.

Be Prepared. Directors will come prepared to meetings by reviewing the agenda and related materials before the meeting

Keep Focused. Directors will listen attentively and courteously to demonstrate respect and willingness to learn.

Maintain Confidentiality. Directors will not share highly sensitive information and respect the privacy of all owners.

Maintain a Supportive Attitude. Directors will encourage owners, employees, managers and contractors to promote better performance and teamwork.

Be Loyal. Directors will respect the authority of the board by not

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undermining majority decisions and enacted policy.

Respect the Rules. Directors will obey the homeowner association rules to set a positive example for others. Directors are not "above the law."

Pay Assessments on Time. Directors will remain current in all charges and will not expect special treatment.

Promote Harmony. Directors will promote community harmony in act, word and deed.

A Code of Conduct controls caustic communications, curtails conflicts and calms cantankerous communities. Adopt one today! 🌟

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Change is Inevitable

When it comes to renovation projects, homeowner associations should be wary of "change orders". Change orders are a sneaky way for unscrupulous contractors to jack up the price of a project they've won with a low bid. Sometimes change orders are necessary since it's impossible to identify all of the underlying building conditions or predict every potential problem before a project begins. Therefore, the key questions are: What are legitimate change orders and how much should be allotted for them?

Some HOA projects run over budget because the firm hired to prepare the scope of work, the budget projection and the construction documents for bidding don't spend enough time doing investigative site work during the discovery phase. This leads to problems and to money spent addressing overlooked conditions that should have been spotted.

The Regenesiis Report

Don't Duplicate Work. On a typical project, the engineer or architect should conduct a hands-on examination of the proposed work to determine underlying conditions. This is necessary to verify the condition of the building and the extent of repairs needed. Of course, even the best design work is dependent on properly administering the quality of construction.

Set Aside a Contingency. Every project should include an additional contingency of 20% of the total bid for unforeseen circumstances that will need change orders. The contingency should take into account items that cannot be detected during the initial site inspection. Older, neglected buildings or buildings inadequately repaired previously are more likely to have hidden problems that go undetected.

A contingency also gives the board the option to add items or features during the course of construction. Working with a cost cushion enables the board to choose, for example, a better quality but more expensive waterproofing material than originally specified. The contingency allowance is not intended to cover major changes to the scope of work that should have been accounted for during the design phase.

Two Requirements. To control excessive change orders, your agreement with the contractor should state that:

1. The price of a base-bid item will be renegotiated when its quantity increases by more than 10 percent above what was specified in the original bid document.
2. All change orders are to be put in writing and signed by the board or manager before the additional work is undertaken. Orally approving change orders will only lead to arguments later about who agreed to what.

To avoid unnecessary cost overruns, make sure to prepare a well investigated and comprehensive scope of work and never pay for any changes not approved in writing. That way, more of the "change" remains in the HOA's pocket.

By Stephen Varone and Peter Varsalona 🌟

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14 Pool and Playground Principles

With summer here, it's time to make sure that your pools and playgrounds are legally ready for action. With the proliferation of lawsuits and regulations, there are sound reasons for doing a legal checkup.

1. Eliminate rules that discriminate against children or single them out for special treatment.
2. Make sure the rules designate hours open.
3. Make sure the rules are distributed to all owners and residents.
4. Review adequacy of signage. It does little good to establish pool or playground rules if they are not clearly posted.
5. Physically inspect gates, locks, and fences to ensure they are in proper working order.
6. Conduct an insurance inspection with your agent who can advise of ways to reduce the HOA's liability exposure.
7. Review local and state ordinances and regulations. Most regulate pool fences and gates however, the type of fence, height, material etc. varies widely from jurisdiction to jurisdiction. County and state health departments impose regulations concerning chemicals and water purification which need to be adhered to and systematically recorded.
8. Review safety procedures and equipment. If your HOA employs lifeguards, review and verify their training.
9. If you utilize "pool monitors" be certain they receive training that covers pool rules, what authority they have to enforce those rules and safety procedures.

10. Review pool maintenance contract. In addition to the standard boilerplate language, the contract should also require the contractor to indemnify and hold harmless the HOA in the event of injury or damage resulting from the negligence of the contractor.

11. Review maintenance duties by performing walk throughs with regular contractors.

12. Comply with the requirements of the Americans with Disabilities Act (ADA) if you make your pool or playground available to the public.

13. The Virginia Graeme Baker Pool and Spa Safety Act was effective December 20, 2007. It applies to pools and spas and requires safety drain covers and suction entrapment prevention devices.

14. Suspension of privileges. Many governing documents and/or Collection Policies allow the HOA to suspend the privileges of a delinquent owner, including access to the pool and clubhouse. If you invoke this, make sure the specifics are detailed in the rules and policies.

by Debra J. Oppenheimer, Esq. 🗿

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The Cocoon

A man found a butterfly cocoon. One day a small opening appeared. He sat and watched the butterfly for several hours as it struggled to force its body through that little hole. It stopped making any progress and looked like it was stuck.

So the man decided to help the butterfly. He took a pair of scissors and snipped off the remaining bit of the cocoon. The butterfly then emerged easily, although it had a swollen body and small, shriveled wings.

The man waited for the wings to enlarge to support the butterfly. But that didn't happen. The butterfly spent

the rest of its life unable to fly, crawling around with tiny wings and a swollen body.

Despite the kind heart of the man, he didn't understand that the restricting cocoon and the struggle needed by the butterfly to get itself through the small opening; were God's way of forcing fluid from the body of the butterfly into its wings. To prepare itself for flying once it was out of the cocoon.

Moral: Our struggles in life develop our strengths. Without struggles, we never grow and never get stronger, so it's important for us to tackle challenges on our own, and not be relying on help from others. 🗿

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No Pun in Ten Did

1. The fattest knight at King Arthur's Round Table was Sir Cumference. He acquired his size from too much Pi.

2. I thought I saw an eye doctor on an Alaskan island, but it turned out to be an optical Aleutian.

3. She was only a whiskey maker, but he loved her still.

4. A rubber band pistol was confiscated from algebra class, because it was a weapon of math disruption.

5. No matter how much you push the envelope, it will still be stationery.

6. A dog gave birth to puppies near the road and was cited for littering.

7. A grenade thrown into a kitchen in France would result in linoleum blown apart.

8. Two silk worms had a race. They ended up in a tie.

9. A hole has been found in the nudist camp wall. The police are looking into it.

10. Time flies like an arrow. Fruit flies like a banana.

11. Atheism is a non-prophet organization.

12. Two hats were hanging on a hat rack in the hallway. One hat said to the other: "You stay here; I'll go on a head."

13. I wondered why the baseball kept getting bigger. Then it hit me.

14. A sign on the lawn at a drug rehab center said: "Keep off the Grass."

15. The midget fortune-teller who escaped from prison was a small medium at large.

16. The soldier who survived mustard gas and pepper spray is now a seasoned veteran.

17. A backward poet writes inverse.

18. In a democracy it's your vote that counts. In feudalism it's your count that votes.

19. When cannibals ate a missionary, they got a taste of religion.

20. If you jumped off the bridge in Paris, you'd be in Seine.

21. A vulture boards an airplane, carrying two dead raccoons. The stewardess looks at him and says, "I'm sorry, only one carrion allowed per passenger."

22. A fish swims into a concrete wall and says "Dam!"

23. Two Eskimos sitting in a kayak were chilly, so they lit a fire in the craft. Unsurprisingly it sank, proving once again that you can't have your kayak and heat it too.

24. Two hydrogen atoms meet. One said, "I've lost my electron." The other replied "Are you sure?" The first answered, "Yes, I'm positive."

25. A guy sent ten puns to friends hoping that at least one would make them laugh. No pun in ten did.

Know a good joke? Email it to rich@regenesi.s.net 🗿

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