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Portland Edition

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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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Managing Solo

Whether due to rugged individualism, frugality or lack of viable alternatives, most homeowner associations are self-managed. One might suspect that most self-directed HOAs are small or lacking in common area amenities. Actually, many are quite large, complex and the kind that would typically have professional management. What caused them to go solo and what are some of the dynamics of self management?

According to **The Owner's and Manager's Guide to Condominium Management**

"For self-management to be successful, unit owners must have plenty of time and experience, and a professional attitude toward their work for the association. For example, the treasurer must understand accounting and be willing to devote a significant amount of time to the maintenance of proper financial records and timely collections. The chair of the landscape committee should have gardening experience so that either a landscape contractor or a gardener can be properly supervised. If the association is fortunate enough to have members who have the three main attributes--talent, time and concern--self-management may be the best choice."

Size of the development is an important factor. Although it should not be the ultimate factor in deciding to self-manage, a sound case can be made for limiting self-management to HOAs of fewer than 30 units with limited common area space and no recreational facilities. The larger HOAs have more work. Most volunteers don't want or need another job, particularly an unpaid one.

The main advantage of self-management is cost. However, if the motivation for adopting self-management is purely economic, the board should consider that decision closely. It makes little sense to save each owner a few dollars a month in management fees when the value of their property many decrease by thousands of dollars as a result of that decision.

Equally important is the question of who directs contractors, employees and volunteers. Supervision cannot come from an owner who simply wants to be the boss.

Supervision should come only from a person with time and experience to oversee and control work performance properly.

The board must consider the legal implications of self-management, since the board itself is liable for its decisions or indecision. The board's responsibility is to both fellow owners and the general public.

Although many governing documents contain a hold harmless clause that seeks to protect board members from legal repercussions for their actions, this does not prevent their being sued for mismanagement.

If the members consider self-management to be an adventure, enthusiasm may be high enough to be successful. However, that initial enthusiasm usually wanes as the demands on volunteers increase. A breakdown in the volunteer system spells disaster for continuity. Today's "house-afire" is tomorrow's "burn-out".

Consider the two really nasty aspects of self-management: having to enforce rules on or collect past due fees from your neighbors. Suddenly, the neighbor relationship becomes a master-servant relationship and neither party enjoys the new role it must play.

Controlling one's own destiny in a homeowner association is a sea fraught with storms and smooth sailing. Under the right set of circumstances, self-management can work. As long as the approach is professional and business-like with a positive, affirming attitude, it can click. If it isn't clicking, consider the alternatives that professionals can offer. ☼

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Ask the HOA Expert

Q Our board recently presented the coming year's budget at the annual meeting. A number of members said the increase was too high for them and that they couldn't afford it. A couple of others chimed in with the same tune. The board president reacted by caving in. Without first consulting with the rest of the board, he stated the proposed increase would be reduced by half! Now we don't have enough money to properly fund operating and reserves. How can this have been avoided?

A There are several ways this could have been handled differently. Other board members could have challenged the president for promising something beyond his authority (like reducing the budget). This would have been embarrassing but not out of line considering the consequences of his unilateral action.

The other more political approach would be to respond to the complainers that "the board would take their comments under consideration at the next board meeting". This removes a volatile topic from the meeting but doesn't dismiss the concerns expressed.

The third and best response is to patiently explain why the HOA needs this budget to properly care for the common elements. Proper maintenance of the common elements has a direct affect on individual member home values. Failing to maintain properly will cause values to fall and may make selling and refinancing more difficult. One way or another, good or bad, the consequences will cost the members money. Wouldn't they rather pay for good consequences?

Now as to the president problem. Board presidents do have certain authority but not to reverse a board action or vote. This person needs to be reminded that the mark of an effective leader is that they do not buckle under pressure.

Q What can be done about a board president lying to the board about legal opinions obtained from the HOA's lawyer?

A All board members are entitled to read legal opinions generated for the HOA and, indeed, should always review them before making decisions that concern that legal opinion. If the president withheld this information when requested or says the lawyer "told" him "such and such", the board should take issue with him. Board officers serve at the pleasure of the board majority. If the president is disseminating false or misleading information, the board majority can removed him from office and appoint another director.



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Q Our board uses Roberts Rules of Order to conduct our meetings and discussion is limited to board member deliberations with no comments allowed from guests. Some members have asked us to reconsider and to allow open comments from the audience. Is this a good way to go?

A Board meetings are meetings of and for the board, not the general members. Once the

board meeting is called to order, guests should be advised that they are there to listen only. The chair can make an exception to this rule during the meeting if there is a good reason to do so, such as asking a particular guest with special knowledge for comment. But this exception should be used sparingly or it will be perceived to be an invitation for other guests to jump in.

Q We have a homeowner who likes to tell the board how to take care of business. He now wants a board member to represent him, read his statements at the meeting and have them incorporated into the minutes if he is unable to attend the meeting.

A If he has something to say, he should attend the meetings and speak in an Open Forum created for that purpose. What he says, however, is not appropriate for the meeting minutes. Minutes should reflect board business decisions, not discussions or opinions.

Q Our board wants to send a registered letter to all owners requesting a vote to approve a special assessment. The letter will state that failure to respond will be considered a "yes" vote. Is this proper?

A Failing to respond to the letter is not a vote one way or another. So, the board cannot interpret no response as approval. It must get the required number or percentage of "yes" votes to pass the special assessment.

Q Our HOA restricts the number of occupants to a maximum of four per unit. One of the units now has five occupants. Can the board enforce occupancy requirements?

A The HOA or board generally does not have the authority to restrict occupancy numbers. Unit interiors belong to the unit owners and it's up to them to decide how many occupants is reasonable. Most landlords would not allow more occupants than reasonable because of heavy wear and tear.

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There is also the Fair Housing Act to consider. Restricting the number of occupants might be construed to discriminate against families. The basis for restricting numbers must be reasonable and consistently applied or the HOA runs the risk of getting sued by the government.

However, if additional occupants are burdening limited parking or significantly increasing the load on HOA provided services (like trash) or utilities (like water and sewer), the board can take issue since the occupancy level is impacting the common elements and costs.

Q We have an owner that rents out his unit but drops by every week to use the HOA's dumpster to empty his garbage. Help!

A If an owner rents his unit, his use privileges are transferred to his renters. So, this landlord should be advised in writing not to use the HOA's services further. A similar situation arises when a landlord owner shows up to use the HOA's pool or clubhouse. If he is either a landlord or not a guest of a resident, he is not entitled to use HOA services or amenities. ☹

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Dealing with a Crazy Board

In my experience, the number of irrational or unreasonable owners greatly outweighs the number of irrational boards. That said, there are instances where boards or individual board members act outside their authority, act irrationally, or simply ignore legitimate complaints or calls for action by owners.

What should be done when a board or manager fail to enforce the governing documents fairly and consistently? What if a board or manager refuse an owner's request to review HOA documents or denies an owner's request for a hearing? In each of these circumstances, the owner should be able to point to particular provisions of the governing documents which require explicit action and compliance by the board.

If a homeowner believes the board is failing to respond appropriately or acting irrationally, they should:

1. Articulate the issue(s) in writing as succinctly as possible;
2. Gather all relevant written documentation;
3. Review the HOA's governing documents (Articles of Incorporation; Declaration, Bylaws, Rules & Regulations) and identify which provisions control over the issue(s); and
4. Identify all relevant persons who are witnesses, parties or have other persons with knowledge of the facts and circumstances giving rise to the issue.

The owner should then draft a concise written letter or request to the board that embodies the four factors described above. If the HOA is professionally managed, then a copy of the letter should be sent to the manager.

The homeowner association's governing documents should have a process already in place to resolve the dispute. If so, the owner should identify the process and insist on board compliance. If not, and if the board does not respond adequately to the owner's letter, then the owner can request a meeting with the board.

If the board continues to dismiss or ignore the owner and if the manager is ineffective in helping to resolve the dispute, then the owner should seek legal counsel. Keep in mind that many association governing documents require mediation or similar dispute

resolution process be conducted prior to a lawsuit being filed.

If an owner does not wish to seek legal assistance, and if they feel the board is failing to follow its governing documents and otherwise acting irresponsibly or irrationally, then the owner may wish to try to unseat the board through a special election. An HOA's governing documents ordinarily outline the process for removing a board member or entire board.

The key to reducing and resolving disputes between the "crazies" (whether homeowners or boards) is to rely strictly upon the homeowner association's governing documents. A modicum of common sense and reasonableness also go a long way to solving the problem. If all else fails and the board cannot be removed via special election, then mediation or court interaction may be required. If so, in claims arising from enforcement or disputes, many governing documents allow the prevailing party to recover reasonable attorney's fees and costs.

By Attorney Dan Zimmeroff of Barker Martin ☹

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12 Pet Rule Provisions

There's a maxim that the greatest challenges at homeowner associations are Pets, Parking and People. A carefully executed policy will promote the harmonious integration of pets and people. The following provisions are offered to help you shape such a policy:

1. Only dogs, cats, birds or other traditional household pets are permitted.

2. Reptiles, rodents and [fill in the blank] are not considered to be household pets.

3. No animal shall be kept or bred for commercial purposes.

4. Pets may not exceed __ pounds when fully grown.

5. Total number of pets and offspring per residence is limited to _____.

6. All pets shall be registered and inoculated as required by local ordinance.

7. Pets are not permitted to run at large.

8. Pets must be kept on a leash or restrained at all times when in the common area.

9. All pet damage is the sole responsibility of the owner. Damage to HOA property will be repaired and reasonable repair costs billed to the resident (or the unit owner if the pet owner is a renter).

10. Owners shall pick up and dispose of all pet litter immediately. Any owner failing to clean up after a pet is subject to reasonable cleanup cost plus a \$__ fine for each occurrence.

11. Any pet that disturbs the neighbors, creates excessive noise, is allowed to run freely, is aggressive to people or destructive to HOA property is subject to permanent removal from the property. In such case, the pet owner (or the unit owner if the pet owner is a renter) will be given notice to remove the pet from the property within ____

days. If the pet is not removed by the deadline, a fine of \$__ per day will be chargeable to unit owner's account and subject to normal collection procedures established by the homeowner association.

12. Procedure for pet complaints: If a pet is being offensive, offended party should first discuss the issue with the pet owner and request correction. If the condition persists, submit a written request for relief to the board (or management agent, if applicable) explaining the offense, time and place.

Since pets are considered cherished parts of their owner's family (and may even be an owner's only family), try not to be too "dog-matic" or you may run "a-fowl" with "cat-astrophic" results. 🐾

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Collection Policy Scorecard

How effective is your homeowner association's collection policy? Does it contain all the tools you need to collect the maximum amount your HOA is entitled to? Are your actual billing and collection practices consistent with your collection policy? Will the policy stand up in court? Take this simple test to find out how good your collection policy really is. Circle either Yes or No and tally the totals.

1. Policy states that a delinquent owner is responsible for payment of late fees for every month an account is delinquent. Yes No

2. Policy states that a delinquent owner is responsible for payment of any management company service fees. Yes No

3. Policy states that a delinquent owner is responsible for payment of any other fees charged by any collection service

provider or bank, for example: tracking fees, returned check charges or processing fees. Yes No

4. Policy clearly explains when and how many late notices are sent, when liens are recorded against the property, and when the account may be turned over to an attorney. Yes No

5. Policy explains when late fees and interest will be imposed on delinquent accounts. Yes No

6. Late notice letters include warnings of any fees, costs or interest that will be charged to a delinquent account, and these warnings are consistent with the Policy. Yes No

7. Policy is consistent with your HOA's Declaration. Yes No

8. Policy explains the order in which payments are applied: first to attorney's fees, costs, interest, service and late fees, and last to payment of the principal. Yes No

9. Accurate statements including all costs, fees and interest are delivered to delinquent owners. Yes No

10. Policy provides that if an owner communicates via email, text, fax, phone or any other method, the owner authorizes the association and its agents to communicate via the same method in the future. Yes No

11. Policy requires delinquent accounts to be turned over to collection within 90 days of becoming delinquent. Yes No

12. Policy requires that, immediately upon receiving notice of an owner's foreclosure or bankruptcy, their account, whether or not delinquent, is turned over to the HOA's attorney. Yes No

13. Assessments are due monthly provided the Declaration permits. Yes No

14. Policy includes an acceleration clause of all assessments due for the fiscal year. Yes No

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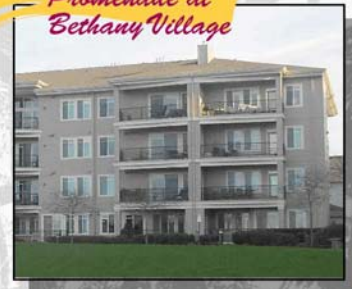
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15. Policy includes a rent intercept clause which allows the HOA to collect rent from tenants if the owner becomes delinquent. Yes No

16. Policy includes a receivership clause which enables the HOA to foreclose its lien. Yes No

17. Policy explains why timely payment of assessments is in the best interest of the community. Yes No

18. Policy is delivered to all owners every year and available on the HOA's website. Yes No

19. Policy provides that a security deposit may be assessed against a delinquent owner in the board's discretion. Yes No

GRADING KEY

(NUMBER OF YES CIRCLED)

15-19 Collection Policy is efficient.

9-14 Collection Policy may be vulnerable if challenged in court. Updating your policy could help you collect more money.

0-8 Collection Policy leaves the homeowner association at risk of a high delinquency rate.

by Amelia J. Adair, Esq. ☀

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Guide to Rule Enforcement

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.

Generally, 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 nuisances, 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.

By William G. Gammon ☀

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The Coach Speaks

The following wisdom comes from one of the greatest coaches of any sport, basketball's John Wooden:

A coach is someone who can give correction without causing resentment.

Ability is a poor man's wealth.

Adversity is the state in which man mostly easily becomes acquainted with himself, being especially free of admirers then.

Be more concerned with your character than your reputation. Your character is



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what you really are, while your reputation is merely what others think you are.

Be prepared and be honest.

Consider the rights of others before your own feelings, and the feelings of others before your own rights.

Do not let what you cannot do interfere with what you can do.

Don't measure yourself by what you have accomplished, but by what you should have accomplished with your ability.

Failure is not fatal, but failure to change might be.

If you don't have time to do it right, when will you have time to do it over?

If you're not making mistakes, then you're not doing anything. I'm positive that a doer makes mistakes.

It isn't what you do, but how you do it.

It's not so important who starts the game but who finishes it.

It's the little details that are vital. Little things make big things happen.

It's what you learn after you know it all that counts.

Material possessions, winning scores, and great reputations are meaningless in the eyes of the Lord. He knows what we really are and that is all that matters.

Never mistake activity for achievement.

Success comes from knowing that you did your best to become the best that you are capable of becoming.

Success is never final, failure is never fatal. It's courage that counts.

Success is peace of mind which is a direct result of self-satisfaction in

knowing you did your best to become the best you are capable of becoming.

Talent is God given. Be humble. Fame is man-given. Be grateful. Conceit is self-given. Be careful.

There are many things that are essential to arriving at true peace of mind. One of the most important is faith which cannot be acquired without prayer.

Things turn out best for the people who make the best of the way things turn out.

Winning takes talent, to repeat takes character.

You can't let praise or criticism get to you. It's a weakness to get caught up in either one.

You can't live a perfect day without doing something for someone who will never be able to repay you.☹

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A Bit o' the Blarney

Paddy was driving down the street in a sweat because he was late and couldn't find a parking place. Looking up to heaven he said, "Lord take pity on me. If you find me a parking place I will go to Mass every Sunday for the rest of me life and give up me Irish Whiskey!" Miraculously, a parking place appeared. Paddy looked up again and said, "Never mind, I found one."☹

Father Murphy walks into a pub and asks the first man he meets, "Do you want to go to heaven?" The man said, "I do, Father." The priest said, "Then stand over there against the wall."

Then the priest asked the second man, "Do you want to go to heaven?" "Certainly Father," the man replied. "Then stand over there against the wall" said the priest.

Then Father Murphy walked up to O'Toole and asked, "Do you want to go to heaven?" O'Toole replied, "No, I don't Father." The priest said, "I don't believe this. You mean to tell me that when you die you don't want to go to heaven?" O'Toole said, "Oh, when I die, of course. I thought you were getting a group together to go right now."☹

Paddy was in New York patiently watching the traffic cop on a busy street crossing. The cop stopped the flow of traffic and shouted, "Okay, pedestrians." Then he'd allow the traffic to pass. He'd done this several times as Paddy stood on the sidewalk. After the cop had shouted, "Pedestrians!" for the tenth time, Paddy went over to him and said, "Is it not about time you let the Catholics cross?"☹

Gallagher opened the morning newspaper and was dumbfounded to read in the obituary column that he had died. He quickly phoned his best friend, Finney. "Did you see the paper?" asked Gallagher. "They say I died!" "Yes, I saw it!" replied Finney. "Where are ye callin' from?"☹

An Irish priest is driving and got stopped for speeding. The policeman smells alcohol and sees an empty bottle on the floor of the car. He says, "Father, have you been drinking?" "Just water" says the priest. The trooper says, "Then why do I smell wine?" The priest looks at the bottle and exclaims, "Praise Jesus! He's done it again!"☹

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