



# The Regenesis Report



Seattle Edition      Innovative Homeowner Association Management Strategies      Priceless

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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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## Resale Revelation

A buyer exploring the complexities of home acquisition is often in for wild ride. It is a place of mystery where few should venture alone. Most opt instead to use a guide called "real estate agent" who is experienced in both hand holding and Dream Home location. To "seal a real deal", buyers typically require financing and the Three Ls (location, location, etc.). Yet there is an equally important consideration known as "resale disclosure". Without it, "caveat emptor" (buyer beware) is a frightening reality.

Resale disclosure means a seller divulging information that any prudent buyer would want to know, such as: Are there any known structural, wiring or plumbing problems? Does the basement resemble an indoor swimming pool during the rainy season? At night, does the house have a Chernobyl-like glow? Is there evidence of radon or lead base paint? Was this location ever a "crack" house or meth lab?

In general, single family house sellers are required to disclose a host of information that may result in buyer back out. And no wise real estate agent allows a transaction to close without "full" disclosure because it's often the agent that suffers the buyer's wrath for seller omissions.

Curiously, resale disclosure is alarmingly absent when it comes to most HOA home sales. And this is very disturbing considering the substantial liabilities and financial obligations which are unique to owners of HOA property. In addition, many real estate agents simply aren't educated about HOA issues. And many homeowner associations do not have and maintain the kind of disclosure information buyers need to know.

So what kind of "liabilities and obligations" does an HOA owner have? Here's an example: When a condo buyer gets a prospective unit inspected, the inspection reveals nothing about the buyer's financial responsibility for all the neighbors' condos and the common area buildings, amenities and grounds as well. If the other units are riddled with dry rot, the buyer will have to

pony up a share of the repair costs. A unit inspection won't forewarn of any of these problems. If the owner, property manager or board aren't quizzed about known defects, the buyer often won't know until after closing. This invariably results in Unhappy Camper Syndrome. What should be a happy event turns into a disaster. Avoidable? Absolutely!

Another example: HOA owners are personally liable for lawsuits to which the homeowner association is a party. While the HOA should carry both a directors and officers insurance and general liability policy, many leave board members and owners exposed to potentially large personal judgments. Don't you think buyers would like to know about the HOA's insurance and any litigation that is being bandied about?

Here's a Resale Disclosure Checklist that an informed HOA buyer should have to reveal a true and complete picture:

1. A statement about any special assessment approved or anticipated
2. A statement regarding the status of the owner's account
3. A statement about the status of the reserve account for repair and replacement of common area components with useful lives of 2-30 years (aka reserve study)
4. A copy of the HOA's current year budget, year end balance sheet and income and expense statement for the previous fiscal year
5. A statement concerning any litigation or judgments to which the HOA is or may become a party
6. A summary of the HOA's insurance policies that includes the insurance carrier(s), types of coverages, policy limit of each coverage and deductible
7. A statement that the unit in question and its limited common elements are not in violation of the architectural guidelines due to alteration or addition.

8. A copy of the current bylaws, declaration, resolutions, rules and regulations and architectural guidelines
9. Approved minutes to past year's board and owner meetings
10. Newsletters for the past year

Some HOAs are reluctant to provide this information even if they have it as it may be incomplete or inaccurate. Most courts rule that the homeowner association has no financial interest in the outcome of a sale so has no duty to disclose. However, many HOAs, wishing to be helpful, provide certain information to purchasers and their banks. Ironically, once a disclosure is voluntarily made, courts have found that the information provided must be accurate. Therefore, the HOA, legally speaking, is better off providing no information than to provide any. To overcome this problem, some HOAs use a custom disclosure form with a "weasel clause" which states something like "This information is believed to be correct, but the lender/buyer should independently verify all information."

The board is caught between a rock and a hard place: If information is provided to the buyer that causes the sale to fail, it may be sued by the seller to whom it owes fiduciary duty. If it fails to disclose information to the buyer that might have prompted the buyer to back out, the new owner may attack like a rabid pit bull because of omission or concealment. To navigate this fine line, some HOAs provide information only if the seller and buyer authorize the release of it and agree to indemnify (protect and defend) the HOA for any information it releases. If the buyer and seller don't agree, no information is forthcoming. Further, information provided to lenders is on an HOA form and conditioned that the information will not be disseminated to third parties.

Thus, the quandary: How does a HOA buyer get the "straight scoop"? It's wise to talk with several knowledgeable residents about what's going on. Knocking on a few doors will often produce a huge amount of insider information in very little time. Since these folks don't have a direct interest in the sale, they are usually quite candid.

In the final analysis, the better informed a buyer is before closing, the better owner will result. Uninformed buyers become naturally disgruntled when post sale revelation hits. The next time a For Sale sign sprouts up in your HOA, make sure both the agent and owner are prepared with resale disclosure information. 🏠

### Ask the HOA Expert

**Q** Many of our members spend the winter months in Florida or Arizona. Since board meetings take place during their absence, it limits their ability to serve on the board. We are thinking about having understudies who could stand in for directors who are out of town. What do you think of this plan?

**A** Directors need to regularly attend meetings to stay informed of the issues. They are not allowed to have an understudy take their place. It would make more sense to amend the bylaws to allow board meeting teleconferences. It's fairly common in HOAs which are second homes to many members.

**Q** How can we shut down or discontinue amenities that few members use like hot tubs and tennis courts?

**A** You need to read your governing documents and state HOA statutes for provisions relating to discontinuing amenities. If there is nothing prohibiting it, an appropriate vote of the members (whatever the governing documents indicate) is enough to get this done. The board may have the authority to do this but it is always recommended that such action be put before the members.

**Q** We recently had an incident where a member's dog bit another resident. There was a discussion at the next board meeting about whether the HOA's pet rules needed to be amended. A committee was appointed to research and make recommendations.

Following the discussion, one of the board members made a comment that if any dog threatened him, he would kill it. Should this comment be recorded in the minutes?

**A** The comment was clearly inappropriate, especially for a board member. And, no, it has no place in the minutes since the minutes are a record of board business, not discussions or comments. Since this comment has nothing to do with board business or HOA policy it would only confuse those reading the minutes and likely outrage dog owner members. Nothing good would come of it.

The outspoken director should be strongly advised to keep such comments private and out of the board meeting. The directors are elected to handle HOA business in a reasonable way. If this director is prone to such behavior, it will not serve the HOA or board well.

**Q** We have several individuals who complain about board decisions and rudely intrude into director homes at all hours of the night to "discuss" their views. Do you have any suggestions on how to protect the board members from being punching bags?

**A** To protect director privacy, The policy should be that all comments and complaints need

to be in writing and written by the communicator. Neither the board members or the manager should accept phone calls or verbal instructions to "tell so and so, etc." Advise the member to write it down and drop it in the suggestion box, mail it to the HOA's address or email it to HOA's email address.

When put in writing, the board and manager can effectively deal with it either sooner, if it is urgent, or later at the next board meeting, if it requires discussion. If the HOA has a committee system (Landscaping, Rules, Social, etc.), those communications can be directed to the appropriate committee for further action.

Once the written requirement is invoked, make sure to respond to all communications in a timely way. This system will create problems if written requests, complaints or communications disappear down a "dark tunnel" never to be seen again.

Having a written requirement will drastically reduce the number of communications since writing is more difficult than speaking. Once members are informed of the process, the board members need to respectfully but firmly refuse to receive phone calls or personal visits. In time, the members will understand the need for the written process and potential board candidates will be encouraged to run when they know their privacy is protected. 🗝

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### Board in Denial

The board of Nottacare Condominium has just convened to discuss a painful but no longer avoidable issue: a special assessment. The roof is five years

overdue for replacement and many of the temporary patches have failed, drenching four different units repeatedly. Mary in 1A has made many desperate appeals that something be done and Bob in 4B peppers his demands with four letter words. The other two members are talking to their lawyers. There is a smell of tar in the air. And as bad as it is for these residents, the cure will be painful for one and all.

Nottacare's situation is not unlike that at many HOAs across the country. Nottacare's failed roof is what accountants call "an unfunded liability". A liability is a debt or obligation, in this case, the obligation is to replace a roof. Unfunded means there is no money to fulfill that obligation. Do the math: UL + \$0 = SA. (Unfunded Liabilities + No Dough = Special Assessments)

Some HOA boards trip merrily along seemingly oblivious that all things wear out, ignoring the high costs of imminent repairs, failing to prepare for those events and clueless how to overcome being clueless. Denial is not a river in Africa. It's a deadly mindset that not only leads to erosion of HOA assets and home values but also creates a pervasive mistrust, hostility and resentment within the community. So at Nottacare Condos, some are wailing "Raindrops Are Falling on My Head" and all are steamed because here comes another unwelcome and unfair special assessment.

Okay, you get the picture and it ain't pretty. But the good news is that Nottacare is a mythical place and your HOA is real and the board fully prepared to meet these challenges. What's that you say? You just had a special assessment or the board's talking one up as we speak? Don't they know that special assessments are the product of poor planning? Don't they know they penalize innocent victims (the current owners) that are forced to pay for former owners who bailed out before the ax fell? Don't they know a properly funded reserve study could have avoided all of this and made them heroes instead of zeros?

A reserve study is a scientific approach to analyzing future repair and replacement needs and charting a

maintenance and funding plan that the board, the manager and members at large can follow with ease. It answers the bottom line question "How much is enough?" The funding plan shares costs fairly among all owners, not just the poor suckers who get stuck at special assessment time. And with money in the bank, the board will never have the excuse of not doing things when they need doing. No more Raindrop Water Torture. The place will look so good, you'll never want to move!

Denial is a dangerous place to be. There is lots of turbulent water and crocodiles waiting to munch the board in denial. Before you round the bend and meet face to face with avoidable catastrophe, investigate the benefits of a reserve study. 🗝

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### Rule Impression

A lot has been said about homeowner association rules, but most of these discussions center on the *content* of the rules as opposed to the impression the rules give to owners. Yet, there is another aspect of rules to consider. A good set of rules conveys not only what is permissible, but says something about the character of an HOA.

In my years as an HOA attorney, I have seen hundreds of sets of rules, none identical. Some HOAs have no formal rules, instead relying upon the few "use restrictions" in their declarations relating to pets or satellite dishes. Others have a series of one-off policies drafted in response to particular situations that arise. And finally, some have rules spanning tens of pages, attempting to regulate every action. Most of the time, rules are provided by the developer and the board simply lives with them without giving thought to whether they serve and reflect the HOA's style or values.

Rules hold the lowermost position in the hierarchy of governing documents, yet they are probably the most

recognized by owners and often perceived to reflect the character of a community. For example, HOAs without a separate set of rules may appear to have a more laid back approach while those whose rules are voluminous or contain negative language may be perceived as being exacting and strict.

The perceptions may not necessarily be accurate but may appear so if the board is not proactive in creating or revising rules that reflect the homeowner association's current needs and character. For example, an HOA that creates a rule every time a conflict arises with an owner may simply be trying to close loopholes, but on the whole, the actions can appear reactionary.

In most HOAs, rules can be created, modified or removed by the board of directors without a vote of the owners. So the board should consider not only the content of rules, but the form and language used to express them. For example, a pet waste rule can say, "Pet waste in common areas is prohibited" or it can say "Pet owners are responsible for immediate removal of their pet's waste in common areas." Both rules address the same issue, but the first seems impossible whereas the second seems reasonable. A third "kinder" version reads "Owners are encouraged to remove their pet's waste from common areas" really isn't a rule at all. It's a mere suggestion. So care should be taken to ensure that rules clearly convey what is acceptable, and what is a violation. The impression that rules make is not the primary factor to consider when drafting one, but it does deserve thought. *By Marlyn Hawkins - Barker Martin* 🐾

## Roof Flat Maintenance

Flat roofs are common in mid and high rise condominiums and, occasionally, in low rises where the architect is trying to achieve a modernistic look. The problem is that flat roofs come with a whole host of problems not generally found with pitched roofing. For starters, they don't drain as readily due to their relative lack of slope. Then, they are often surrounded with parapet walls that actually keep the water from draining off the roof. Rain water must find its way to drain holes (scuppers) or a few centralized drains which frequently get plugged up with leaf, gravel and litter debris. When this happens and there is a high volume of rain, a flat roof can turn into a roof top swimming pool adding tons of weight which can do structural damage or come cascading into the building through the weakest leaks.

In spite of the illogic of flat roofs, they continue to be built in heavy rain and snow locations. In addition, they are constantly under attack by weather, structural movement and chemicals present in the atmosphere. While normal aging will occur on all roofs, small problems stemming from neglect, abuse, inferior material, poor design or installation can result in costly repairs or premature failure of the roofing system. A regular program of inspection and repair will help detect minor problems before they become serious, and most importantly, protecting the owners' investment by adding years to the life of the roof.

**Maintenance Program.** At least two inspections should be made every year, ideally in the spring to check for winter damage so that repairs can be scheduled during fair weather. And in the fall to ensure that the roof is in good condition for the upcoming winter months. Inspection should also be made after any other occurrences that might affect the roof (like wind storms, construction activities, fires, etc.). Inspections should record any signs of deterioration, poor drainage, accumulated debris, displacement or loss of ballast or other conditions.

**Sealants.** The primary area of maintenance is the sealants on the roofing system which must be examined during all regular inspections. Sealants are susceptible to cracking, pulling away from the walls or other surfaces, and splitting. Sealant replacement should take place at the first sign of deterioration.

**Drainage.** The roof structure should provide for positive drainage to eliminate ponding water whenever possible. The weight of ponding water may deflect the decking and framing members, causing damage to the structure and the roofing system. Proper roof drainage is a very important item in a maintenance program. These structural issues should be addressed with your engineering and architectural advisors.

Drains should be kept clear and debris that may clog a drain such as tennis balls, beverage cans, etc. should be removed during each inspection. Every drain should have a clean "leaf" grate present to prevent clogging of the scuppers and drainpipes.

A roof inspection in the late fall should also include the removal of leaves. A clean industrial broom can be used to

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sweep the leaves from the drainage paths. Another way of removing leaves and other debris as well as observing drainage patterns and activity, is to wash the roof which removes the dirt from the roof surface and helps maintain the surface solar reflectivity. When cleaning the membrane surface, use a non-sudsing, non-abrasive, powdered cleanser like Spic-n-Span.

**Parapet Walls.** Parapet walls should be inspected for deteriorating copings, cracked or open mortar joints or other signs of wear and tear. Degradation of the parapet wall can lead to water penetration into the structure, which is not only harmful to a structure, it may also cause the failure of parts of the roofing system. Insulation, decking, framing members, and the fasteners in a mechanically-attached roofing system may all be adversely affected by moisture penetration.

So there you have it. Hire only qualified flat roof companies to perform this critical annual maintenance. Ideally, you should use the same company that installed the roof. Avoid using handymen for this work. They are unlikely to have the skills and material to do proper repairs. Stick to the pros. 🏠

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### **In the Gutter**

Rain gutters are an inconspicuous but necessary building component that homeowner associations deal with. Their need to perform consistently triggers ongoing maintenance and repair to themselves, exterior paint, siding, roofs and trees. Failure to keep the gutter system running smoothly causes overflows, water intrusion, interior damage, structural dryrot and enormously expensive repairs. There is a lot riding on this often ignored building component.

Until the late 19th century virtually all rain gutters were made of wood. With the advent of metal roll forming

machines around 1900, the ability to create metal gutters became possible. The roll forming process shapes long coils of flat metal into long, formed sections of gutters in a variety of designs. Up until the 1970s, most rain gutter was produced on stationary roll forming machines weighing up to several tons. Then, lighter portable roll formers on trailers became available. With portable roll formers, contractors measure and form gutters onsite.

The three most common metal gutter systems are made of aluminum, steel and copper. The first two have the advantage of being custom painted while copper (unless properly clear coated) will weather and change color over time. All metal gutter options have a 20+ year life or more as long as they are not damaged. Aluminum is the lightest weight metal option and most easily damaged. Downspouts should be located away from areas where damaging forces are likely (vehicle, pedestrian, etc.) or properly protected with landscaping or posts that prevent contact.

One of the most important functions of rain gutters is to prevent foundation movement due to water. Once rainwater has made it to downspouts, the downspouts need to direct the water away from the foundation, either in subterranean rain drains which lead to a french drain (a cistern like system that allows the water to be gradually reabsorbed into surrounding soil), run off to an above ground ponding facility that also allows gradual absorption into the soil or connection to a grid of storm water drains that carry to water back to streams and rivers. Some states and jurisdictions have restricted hard surface (roof, street, parking lot) storm water run-off to onsite collection facilities to avoid contamination of streams and rivers.

An ongoing maintenance issue with gutters is the accumulation of tree and roof debris that block or slow water drainage. This is particularly burdensome in areas of heavy deciduous tree cover. In those areas, ongoing tree pruning and selected tree removal is necessary to reduce the problem and related costs. Gutters typically should be cleaned at least twice a year. Heavy tree cover will trigger "hotspots" where more frequent cleaning is necessary. The HOA should identify these hotspots and do regular

preventive maintenance to minimize damage caused by overflows.

Airborne dirt and roofing granules wash into the gutters and accumulate in gutters and create a hindrance to water flow. Removal of this sludge requires hand work by scooping, flushing with high pressure water hose or blowing out with a leaf blower. The last two can be create additional mess to the landscaping, walkways and building but are quicker and cheaper to accomplish.

There are quite a few options for gutter covers that claim to eliminate the need for gutter cleaning. They come in many different designs and price points and do reduce the need and frequency of cleaning but none can prevent the accumulation of sludge that finds its way passed even the best gutter cover systems. Since these systems are expensive, part of the selection criteria should be ease of removal to flush the sludge.

Gutters and downspouts are a wonderful piece of engineering when properly installed and maintained. While "in the gutter" is a description for someone that is "down and out", rain gutters are indispensable for getting rainwater down and out to where it does no damage. 🏠



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### Horrorscope

#### Aquarius: Jan 20 - Feb 18

Giving out unsolicited advice is a little like giving a blind man a mirror. In other words, nobody needs it or wants it. You should take care of your own odd traits and obnoxious patterns before tackling those of humanity.

#### Pisces: Feb 19 - Mar 20

The study of history is the study of human error. Nobody's perfect and we learn by mistakes. The next time someone tries to give you a lecture, spike his drink with a Mickey.

#### Aries: Mar 21 - Apr 19

Considering the high cost of living, it's somehow ironic that life is so cheap. It's good that you notice that which surrounds you, however don't lecture the less observant. In short, smell the roses but mind your manners.

#### Taurus: Apr 20 - May 20

So you've finally got your second wind? That's very good, but the race is far from over. You've miles to go before you sleep, and thus I advise that you invest in oxygen tanks.

#### Gemini: May 21 - Jun 20

In the substandard mind, commonly held, popular beliefs have a way of substituting themselves for facts. This is a sign of mental sloth. Extricate yourself from idiots and think. The truth shall set you free.

#### Cancer: Jun 21 - Jul 22

Those who wish to make things right have no great objection to seeing things go wrong. Conversely, those who thrive upon chaos and ignorance will fight tooth and nail against order and civilization. Maybe you should just move.

#### Leo: Jul 23 - Aug 22

If you're considering a horrid idea then you're already half converted. The reason you make bad decisions is because you over think. Everyone knows right or wrong, they just hate to admit that sometimes right is hard.

#### Virgo: Aug 23 - Sep 22

Those lacking at least one horse thief in their family tree often have shallow roots. Exotic spices liven the stew, and your diet right now is very bland. You don't need to go to jail, but you do need to take some risks.

#### Libra: Sep 23 - Oct 22

As is demonstrated millions of times per day, idiocy knows no rest. Every moronic concept has a champion, and he usually hasn't bathed for six months. A loud voice, unfortunately, often supersedes common sense.

#### Scorpio: Oct 23 - Nov 21

If discretion is the better part of valor, then valor is the better part of picking your battles wisely. Be humble, buy big guns, and pull them only as a last resort.

#### Sagittarius: Nov 22 - Dec 21

Some people are very wise. Some people are otherwise. The world would be your oyster if you merely broadened your circle with care and consideration. Expand your horizons now, lest the sun set on your dreams. ☀

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