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Seattle 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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Nuisance: What It Is

When people live in close proximity, lifestyle clashes are likely. Noise is the most common complaint followed closely by odors, health and sanitation issues, cigarette smoke and curb appeal. The board is challenged from time to time to sort out various nuisances that interfere with a member's enjoyment of their property. To intervene or not to intervene? That is the question.

Some nuisances are clear violations of law and should be handled by law enforcement. Among these are domestic disputes, out of control parties, abuse of alcohol and use of illegal drugs should all be directed to law enforcement. These are not situations that neighbors or boards are prepared to deal with and there is a chance attempts to do so could escalate to physical altercations. The complainer should be directed to call the police immediately.

Other nuisances, like a neighbor's choice or volume of music, house cleaning acumen, hard stepping ways, or Marlboros can cause ongoing nuisance that are more appropriate for board intervention.

But these issues may come in several flavors: people driven or building design driven or a combination of both. People driven issues are more easily dealt with (STOP doing that!!!), but the board's approach to building design nuisances is more problematic.

New construction generally provides for adequate sound barriers, but older properties often don't. Sound transmission is a very common problem in condo conversions using apartment buildings. In older buildings where common walls, floors and ceilings are wood frame construction, there will often be ongoing noise issues to deal with.

Correcting these soundproofing deficiencies is possible but very expensive. Carpet and sound deadening drywall will help but not totally kill the noise. Installation of hardwood and tile floors in upper units will virtually guarantee an ongoing upstairs/downstairs war. The best the board can do is enact bans on hard surface

flooring and encourage greater noise sensitivity between neighbors.

For people generated nuisances not better handled by John Law, the board's involvement is certainly called for. In this, the board is challenged to "balance competing interests" such as the upstairs neighbor's need to have a trampoline and the downstairs neighbor's need to sleep. In balancing these interests, the board needs to have an actual chance of reconciling the problem. As one judge put it, "The test of nuisance is not what effects it has on persons of delicate or dainty habits or living, or of fanciful or fastidious tastes, or on persons who are invalids, afflicted with disease, bodily ills, or abnormal physical conditions, or on person who are of nervous temperament, or peculiarly sensitive to annoyance or of disturbance of the character complained".

In plain English, this means that just because someone is bothered doesn't automatically make something a nuisance. People living in close quarters are called on for a higher degree of tolerance. But some just can't adjust. Some folks simply need more space, a wider buffer zone. No degree of board intervention will ever satisfy them short of vacating all adjoining units.

Most long lasting solutions for nuisances are compromises. For example, instead of banning Mr. Trampoline from his passion, maybe he will agree to bounce from 9 am to 7 pm instead of at 3 #\$\$!! am. When settling the nuisance dust between neighbors, creativity and humor is called for (a LOT of humor). The board should deflect those which can be to the combatants or the law, and for those that can't, ply the waters of compromise. 🌱

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Ask the HOA Expert

Q I serve on our HOA board. Certain members have circulated a recall petition against two of the directors and obtained the required number of signatures based on our bylaws. The next board meeting is coming up soon and the petitioners want the recall resolved then. What is the normal process to handle a recall?

A Normally, a recall would be handled at a special meeting called for that purpose. As such, it needs to be noticed to all owners well in advance so all have a chance to attend. This should not be handled at a normal board meeting since the topic is likely to take quite a while unless the target directors yield to the pressure and step down early.

Q Our board meets four times a year. We are mostly a second home community with only a few permanent residents. Between board meetings, the board president makes all the decisions as long as they are in line with previous board decisions, the budget and governing documents. The president has been consulting other directors by email concerning certain decisions and calling for motions and votes by email. Doesn't this constitute a board meeting and circumvent the open meeting concept?

A Yes, making board decisions by email constitutes a board meeting. If the bylaws do not prohibit it, the board could possibly enact a resolution which allows doing business this way but it still would probably be construed to be a closed meeting. An alternative to email is to hold teleconferences. The notice of a board teleconference could be emailed to all members so any that wanted to attend could. Consult with a knowledgeable HOA attorney in your state to make sure this is allowable.

Q Our governing documents restrict units to "Single Family" occupancy. Our board interprets this to mean "related" individuals. According to this interpretation, a live-in girlfriend, boyfriend or care giver would all be in violation.

A What gets written into governing documents often sounds reasonable but is unworkable for practical reasons. The board is simply not positioned to research or enforce this kind of standard and shouldn't because it assumes that related persons are superior to non-related persons. "Related" generally means by blood or marriage. So, for the board to enforce this rule, all occupants must show convincing records (like birth or marriage certificates) that prove the relationship. Good luck. Asking isn't getting. And just try to evict an owner.

Just because the governing documents state something doesn't make it reasonable or enforceable. The board has the right to make a judgment on this and choose how it's interpreted. Rather than some arbitrary standard like "single family" the board should focus on *behavior*. If either owners, renters, married or singles are violating HOA rules, they should all be treated the same. It is the behavior that is at issue, not family status.

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Q Our board recently appointed an Architectural Review Committee (ARC). The subject of retractable awnings has come up and the board is currently approving guidelines. However, one has already been installed illegally and does not conform in color and style to the standard. What should we do?

A Since no other awnings have been installed, the board could simply make this violation the standard style and color and kill two birds with one stone. If it is substantially different than the desired standard, then requiring removal and replacement with the standard is the indicated course of action.

This is a great time to communicate to all residents the purpose and authority of the ARC and that approvals involving new standards can't happen overnight. Any architectural approval request that involves establishing a new standard should require at least a 30 day review so that adequate thought and consideration can go into the decision.

Q The old board resigned and appointed a new board to replace it without a vote of the members. Can it do that?

A No. A current board can appoint someone to a board vacancy but it cannot appoint someone to a future vacancy, especially a whole board. Or said another way, once the board has resigned, it has no authority to appoint anyone to anything. A new board needs to be elected by the members at a meeting called for that purpose.

Q The board bought one of our units with HOA funds without putting it to a member vote. Is that allowable?

A Unless the governing document specifically grant that authority to the board (extremely rare), the answer is "No". Any time common elements are expanded, it takes a vote of the members and possibly the member's mortgagees and that vote may require a super majority (like 2/3, 3/4 or even 100%).

Q A homeowner who recently broke her arm wants the HOA to install and pay for a second handrail on the staircase to her unit. She has an equilibrium problem. Is the HOA responsible to install special equipment for residents who are physically challenged? Several of the owners in our complex are seniors and have physical challenges.

A The HOA is not responsible for or required to install special equipment but the board should make “reasonable accommodations” by allowing those that request it to do so at their own cost. The installation should be professional and not detract from the curb appeal. The board can also require the unit owner to remove the installation when it is no longer needed.

That said, if a majority of owners are in favor of installing ramps, handrails and the like, there is nothing wrong with installing them. The members can have anything that the majority is willing to pay for.

Q There is a couple who lives in our HOA and only one of them is listed on the property title. Does the other one qualify to serve on the board or a committee?

A Unless the governing documents allow otherwise (rare), only property owners are allowed to serve on the board. The board may appoint anyone to a committee since they aren't elected positions and subject to oversight by the board.

Q Our HOA fees have been unchanged for the past seven years. The current board has proposed a budget that is calling for a 25% increase per month along with an additional \$500 special assessment. I understand the importance of maintaining the buildings and providing adequate reserves but at what point do increased fees have a negative impact on the market values?

A Assuming that the unchanged HOA fee was adequate to pay the bills and reserve requirements seven years ago, the effects of inflation alone would indicate a 25% increase today just to stay even. But since past boards have kept the fees flat, inflation has eroded the value of the monthly fees and reserves have been starved. The lesson here is clear: The board should *at minimum* increase fees each year at least the amount of prevailing area inflation so the buying power of the dollars remains competitive.

Even better, each year the board should analyze the most recent 12 month's expenses, consider increased costs of

contract services (management, landscaping, pool, etc.) and utilities plus review and revise the reserve study to determine the proper fee level. This is how successful HOAs are run. Yours has been running on empty for years and you finally have a board with enough gumption to face up to it.

An HOA with proper budgeting and funding is much more attractive to buyers than one whose fiscal head is in the sand. Buyers are willing to pay more for this kind of property because the HOA has the funds to do proper and timely maintenance and the property shows it. When the property shows it, it will sell for more money and faster than those that don't. There is no free lunch. If you starve the HOA budget, you starve your own property value. 🏠

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Professional Management Perks

All too often a homeowner association board approaches problems by reacting rather than by plan. Guess what? Many HOAs are in constant turmoil because of this approach. A professional HOA manager can smooth out the bumps in this rocky road by building a sound foundation of planning, record keeping and policy making. Here a some of the major benefits:

Consistent Maintenance. One of the greatest benefits of a professional manager is consistent maintenance of the facilities. A facilities evaluation identifies and prioritizes maintenance needs. Needs that are creating damage are top priority followed by long range capital repairs and replacements like roofing, painting, etc. A good manager integrates both HOA and resident needs. By systematically reviewing

the property, little things like sprinkler over spray that damages siding is corrected quickly before substantial damage results.

Mediator. One of the board's biggest challenges is dealing with people that refuse to follow reasonable rules or to pay fees on time. Depending on the severity of the violation, the board may overreact and invite lawsuits or avoid dealing with the matter at all. In either case, the HOA suffers as problems compound. A good manager has no personal ax to grind and executes systematic enforcement to bring offenders back in line. The manager can also intervene between the board and a owner to defuse an escalating or longstanding conflict.

Continuity. Since homeowner associations are typically run by volunteers, consistency is a HUGE problem. Volunteers like to go on vacation and to sleep once in a while. Board and committee members come and go, often viewing their terms more like a sentence than a privilege. A good manager links these well meaning volunteer efforts together, filling the gaps where volunteerism falls short. The manager often provides centralized record keeping instead of the all too frequent box-of-files-in-the-coat-closet approach. The manager helps educate new directors on their roles to maximize their effectiveness.

Traffic Cop. The manager understands the overall HOA objectives and can direct requests efficiently. Most management companies offer a 24 hour emergency service that reacts quickly to minimize damage or disaster. By quickly assessing needs, they spend a little to save a lot.

Manager Costs. Charges depend on the range of services and the size of the homeowner association. There are three main factors to consider, the monthly management fee, hourly management rate for extras and the hourly maintenance rate.

The monthly management fee should be broad enough to include routine HOA business like attending board meetings, maintaining records, bookkeeping duties, responding to information requests and maintenance coordination. Most companies do, however, charge extra for duties not considered "routine". Maintenance income can be

a profit center for a management company so scrutinize those costs carefully.

Qualifications. A good HOA manager must be patient, diplomatic, respectful and caring. A willingness to understand each client’s needs and philosophy is paramount. A good manager is flexible but persistent without being aggressive. Look for a company that specializes in homeowner associations. Typically, only a relative few in a given location do. Look for specialization, not just the willingness to manage. Call references, including both current and former clients. It’s fundamental to finding the right match.

As with any contractor, it is important to provide a list of expected duties (specifications) to each potential manager. This way, the board can reasonably compare the players. Easing the board’s responsibilities and protecting the homeowner association’s valuable assets make considering a professional HOA manager a prudent course of action.🏠

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Insurance Deductible Resolution

Whenever an insurance claim is filed, the issue of the deductible always raises its ugly head. The issue get more complicated when the claim involves a unit owner who is responsible for all or part of the claim. Since it’s only a matter of time before the next claim will occur, be prepared by adopting a resolution that will give guidance on how the deductible question will be handled.

Here is a sample resolution which can be adapted for your homeowner association’s use. Be sure to run any proposed resolution by your attorney and insurance agent to make sure it conforms to both the governing documents and applicable statutes.

Nottacare Condominium Insurance Deductible Resolution

A. The governing documents of [Nottacare Condominium, a nonprofit corporation formed under the laws of the State of Oz, states that the Homeowner Association shall obtain and maintain in force policies of insurance:

B. Article [fill in article number] of the Bylaws, prescribes the type of insurance and specifies the responsibilities of the Homeowner Association and the owners to place and maintain in force at all time appropriate insurance to protect the owners, the Homeowner Association and its members.

C. It is the intent of the Board of Directors to:

1. Ensure that the Homeowner Association has adequate coverage for property and liability insurance;
2. Ensure the continuing insurability of the Homeowner Association at a reasonable price;
3. Prescribe a procedure for reporting and processing insurance claims.

D. The governing documents of the Homeowner Association are silent regarding responsibility for the payment of the Homeowner Association insurance policy deductible.

I. Insurance Deductible: Owner Insurance

(a) **Determination of Deductible.** The Board of Directors shall determine the amount of the deductible for property loss insurance policies and any other insurance policies required to be obtained by the homeowner association. In determining the deductible under the policies, the Board shall take into consideration the availability, cost and loss experience of the homeowner association.

(b) **Notice.** The Board of Directors shall give written notice to the owners of the amount of the deductible under the homeowner association policies and any change in the deductible proposed in renewal or replacement insurance policies not more than ten (10) days after the effective date of the change. The notice shall be delivered to each unit owner at the current mailing address as follows:

Notice of Change in Homeowner Association Insurance Coverage. There are changes in insurance policies carried by the homeowner association. You should *immediately* notify your insurance agent of the changes described in the enclosed information and ask your agent to determine if changes to your insurance policies are necessary.

1.2. Responsibility for Insurance. (a) **Owner Property Insurance.** Owners shall be responsible for obtaining and maintaining insurance policies insuring their units for any losses less than the deductible amount under the homeowner association's policies and for insuring their own personal property for any loss or damage.

(b) **Tenants.** Tenants shall be responsible for insuring their own personal property for any loss or damage.

(c) **Owner and Tenant Liability Insurance.** Owners and tenants of all units shall obtain and maintain comprehensive liability policies having combined limits of not less than Five Hundred Thousand Dollars (\$500,000) for each occurrence. The insurance shall provide coverage for the negligent acts of owners, tenants, guests or other occupants of the units for damage to the general and limited common elements and other units and the personal property belonging to others.

(d) **Homeowner Association.** The homeowner association shall have no responsibility to obtain or assist in obtaining property loss insurance for any owner or tenant for:

(1) Damage to a unit not covered by the homeowner association's policy (because of the deductible amount or because the claim for loss or damage is one not normally covered by fire and property loss insurance policies with extended coverage endorsements); or

(2) For any damage or loss to the owner's or tenant's personal property.

1.3. Deductible.

(a) Damage Not Resulting from Negligence.

(1) **Damage Affecting More Than One Unit.** If a loss affects more than one unit, when there is no negligence by any party, the parties which have sustained damage (the homeowner association, unit owners or both), shall pay their proportionate share of the homeowner association deductible based on damage to those portions of the building the non-casualty maintenance of which is the responsibility of the party under the governing documents of the association, into the total of all building damage incurred in the loss.

(2) **Damage Affecting One Unit.** If the damage is confined to a single unit, the unit owner shall be responsible for the entire deductible of the Homeowner association policy.

(b) **Damage Resulting From Negligence.** If a loss affects more than one unit, the common elements or a combination thereof, the deductible shall be allocated to the negligent party.

(c) **Owner Policy Deductible.** Owners of damaged units shall be responsible for payment of their individual condominium unit owner policy deductible.

II. Duplicate Insurance Coverage. In the event of duplicate insurance coverage, the insurance policy obtained by the unit owners shall be considered the primary coverage.

III. Procedure for Claims Handling

3.1 All claims against the homeowner association's insurance shall be processed through the Board of Directors, or, if authorized, the Homeowner association's managing agent.

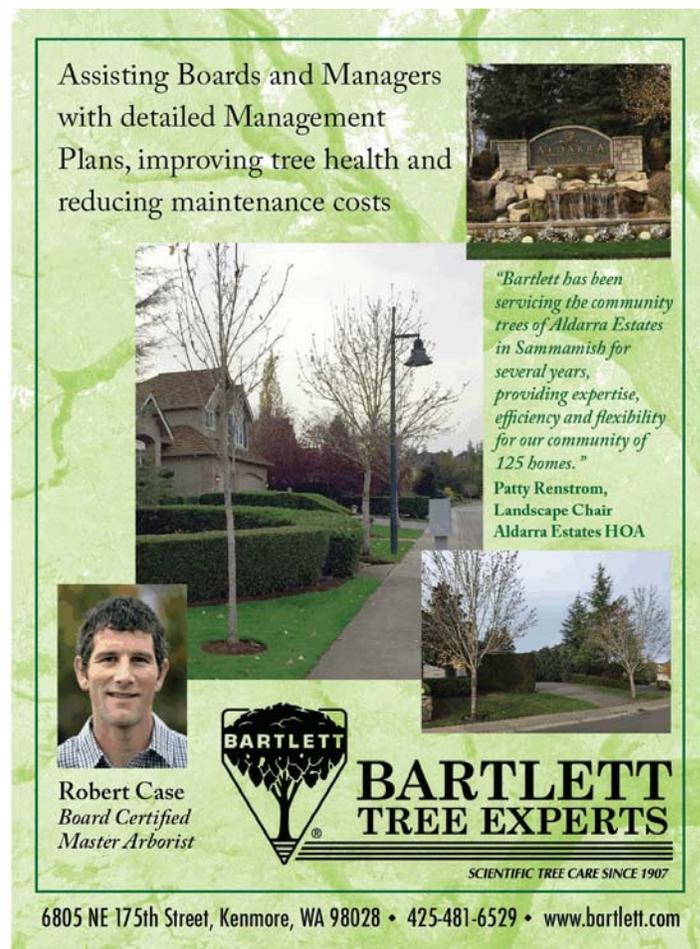
3.2 Charges of managing agent for handling claims, if any, shall be included within the insurance claim, if a claim is filed.

3.3 The homeowner association shall seek reimbursement for

all expenses of processing the claim from an owner when the claim exists and the insurance does not cover all the costs.

Ima Daboss

President - Board of Directors 



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Water Heater 101

Water heaters generally have a lifespan of 8-12 years, but as with anything, the better care you take of it, the longer it will last. There are several easy "set it and forget it" tips that you can use with your water heater, like keeping the thermostat at 120 degrees and always maintain two feet of clearance around the appliance.

Water heater maintenance goes well beyond just checking the thermostat. Here are some detailed tips for making sure your water heater lives a long, full life.

Draining & Cleaning. The bottom of the tank can contain all manner of sediment, calcium deposits, rust and bacteria. Drain a quarter of the tank a few times a year to remove this debris. Hook up a garden hose to the drain valve and run until the water is clear.

Testing the TPR Valve. Most experts recommend testing the Temperature and Pressure Relief (TPR) valve on your water heater every six months for optimal performance. Frequent testing can also reduce the chance of a leak resulting from mineral salt, rust and corrosion buildup, or worse: an explosion.

To perform the test, slowly raise and lower the test lever so that it lifts the brass stem. At this point, hot water should rush out of the end of the drainpipe. If you get no water, or only a trickle, be sure to replace the valve. The main thing to watch for immediately after testing the TPR valve is a leak. If you do catch a leak, operate the test level a few more times to loosen the debris that could be preventing the valve from working correctly. If the valve is functioning properly, turn down the temperature on the water heater controller and turn down the water pressure.

Examining the Sacrificial Anode. 'Sacrificial anode' is the fancy name for the rod of metal located in your water heater's tank that rusts easily so that the steel won't; it takes the fall, essentially. Sacrificial anodes in water heaters are made of highly corrosive metals like magnesium and aluminum. To examine your heater's sacrificial anode you must first remove it. Start by shutting off the electricity or gas to the water heater, as well as the water supply. Drain a few inches of water from the tank via the tank valve. Locate the top of the anode rod or connecting hardware - it may be under a cap about halfway to the center, or it may be under a pink top nipple. Loosen the anode very carefully with a wrench. Here, it may be necessary to apply penetrating oil to the connecting nut or threads.

Once you remove the anode, inspect it carefully. If it is covered in rough metal that looks like it's been chewed, that's normal and your anode is functioning properly. If you can see six inches or more of the steel core wire inside the anode, replace it. If not, put it back in place and check back in a year.

Insulating Older Units. Insulating the walls of a house increases its energy efficiency, and the same is true with a water heater. Although newer units are optimized for insulation, many older units are not, and by insulating them, you could reduce heat loss by 25-45%. If you're not sure whether or not to insulate your appliance, simply touch it; if it's warm to the touch, it's time to insulate.

Before purchasing a water heater insulating blanket kit, check with your

local utility company to see if they offer blankets at discounted rates. Some install them for little-to-no cost.

To self-install, turn off the electricity to the heater at the breaker (or for gas, switch the valve to "pilot" position). Wrap the blanket around the heater and tape it temporarily, leaving open areas for the access panel(s), valves and for gas heaters, the burner areas. Then tape the blanket permanently. Be sure to never set the thermostat above 130 degrees because the wiring could overheat.

When to Replace? If you own a conventional storage tank water heater and it's getting into the double digits in age, it's time to replace. However if your water heater is only a few years old, there are a few things that would only take about \$150-300 to repair. These things include extinguished pilot lights, burner or heating elements failing, thermostats breaking, or valves sticking. The two precursors to replacement are usually either old age or a leak. When your water heater springs a leak that usually means it's time to face the music and buy a new one.

By Sarah Kellner 🐾

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Keeping the Faith

America is engaged in a war of cultures. Almost daily there seems to be some crisis somewhere relating to religious expression. The tone of these cases is that religious expression is undesirable in the public forum and needs to be squelched. While the right to speak should restrict yelling "FIRE" in a crowded theater, expressions of faith are no different than any other form of free speech.

Homeowner associations have a unique opportunity to moderate these attacks on America's traditional values and liberties. As private organizations, they have the right and flexibility to decide how issues of faith expression are dealt with and avoid the nonsense of political

correctness.

While HOAs can't enact rules and regulations that contradict the Bill of Rights, they do have some latitude on how these rights are played out. Free speech can be restricted on private property. One example that comes to mind is limiting personal signs in the common area. In other words, the fact that America enjoys free speech doesn't entitle a citizen to crash a private party to express it. So it is with signs. HOAs can control or restrict signs in the common area if that's what the members want.

When it comes to religion, homeowner associations are not faith free zones. As private organizations, the members are free to do whatever is legal in their own homes and whatever the board feels appropriate in the common area. There are several faith related issues that seem to cause confusion and consternation in HOAs: holding religious services in the clubhouse and hanging Christmas ornaments in the common area. How are they best handled?

Religious Services in the Clubhouse. HOA clubhouses are generally made available for the private use by members and residents. If a resident wants to host a poker party, a quilting club or High Mass, they are all legal activities in every state of the country and, as such, the HOA should not have a policy restricting the activity.

There are some limiting factors which may be included:

- Restricting Outside Groups. The HOA may have a restriction that limits use to residents and their guests and preclude outside groups from using the facility if no resident is involved.
- Limiting Access to Schedule. There may be limitations placed on a resident who wants to monopolize the clubhouse schedule for a set time each week indefinitely.
- Charging a Fee. The HOA can invoke a reasonable fee for private use since use creates wear and tear on the facilities.
- Restricting Private Use. The HOA is not obligated to allow private use of the

clubhouse but since most clubhouses are rarely used, unless there is a compelling reason to restrict use, there generally should be a provision for member use.

Holiday Decorations. Another controversial topic that comes up is whether the HOA should allow decorations to be displayed. There seems to be an impression by some that all should be forbidden. The real answer is "yes and no": It's really up to the members or the board acting on behalf of the members to decide and that decision only should impact the general common area. If decorating the common area is something most of the residents feel appropriate, form a committee of interested residents to place decorations that express Christmas, Hannukah, Santa Claus or whatever.

As a matter of policy, the board can take several approaches:

1. Invite all faiths to help decorate the common area along tasteful guidelines.
2. Limit common area decorations to lights.
3. Prohibit all decorations to avoid controversy.

Demonstrations of religious expression may be just the opportunity a resident curmudgeon needs to beat the drum of discontent. There may even be threat of lawsuits. The last thing the HOA needs is a brouhaha during holidays which are supposed to represent "peace on earth and good will to men". By the same token, the board should not get railroaded by Grinches regardless of the season. In the final analysis, peaceful religious expression builds stronger community and these activities can be used to harmonize the community. Keep the faith!🕯️

Protect Your HOA Landscaping

Landscaping is a homeowner association asset that can and should improve with age. However, diligent attention is required in order to make this happen. Skilled maintenance work, along with occasional and ongoing improvement work are essential.

Skilled shrub pruning is one of the most important requirements of a sound maintenance program. Selective cutting sustains a natural form while removing twigs and branches that are getting too large or overcrowded. Knowledgeable pruning will allow plant size reductions with improved vigor in most cases. Plant shearing, shaping and hedge trimming, by contrast, ignores plant growth habit and ultimately destroys the branch structure.

Carving a sheared form into any shrub increases twig density at the surface, thereby shading out, and in many cases killing off interior growth. The sheared shrubs still continue to get larger with each passing season, until ultimately the only realistic option remaining is removal and replacement.

As you can see in this example, the landscape maintenance philosophy can produce vastly different returns for your investment. The recommended philosophy produces a maturing shrub that contributes more each year to the aesthetic appeal, enjoyment and value of your property. The other philosophy leads to overcrowding, property devaluation and requires correction by replanting a new, small plant. This replacement will take years to contribute much to the appeal of your association. What landscape philosophy does your HOA follow?🕯️

Davebarrisms 2

I realize that I'm generalizing here, but as is often the case when I generalize, I don't care.

I recently had my annual physical examination, which I get once every seven years, and when the nurse weighed me, I was shocked to discover how much stronger the Earth's gravitational pull has become.

I regularly read Internet user groups filled with messages from people trying to solve software incompatibility problems that, in terms of complexity, make the U.S. Tax Code look like Dr. Seuss.

I hate the procedure I currently have to go through when I have car problems. I want a pit crew.

I would not know how I am supposed to feel about many stories if not for the fact that the TV news personalities make sad faces for sad stories and happy faces for happy stories.

I've gained a few pounds around the middle. The only lower-body garments I own that still fit me comfortably are towels.

If God had wanted us to be concerned for the plight of the toads, he would have made them cute and furry.

In 1765, Parliament passed the Stamp Act, which, as any American high school student can tell you, was an act that apparently had something to do with stamps.🕯️

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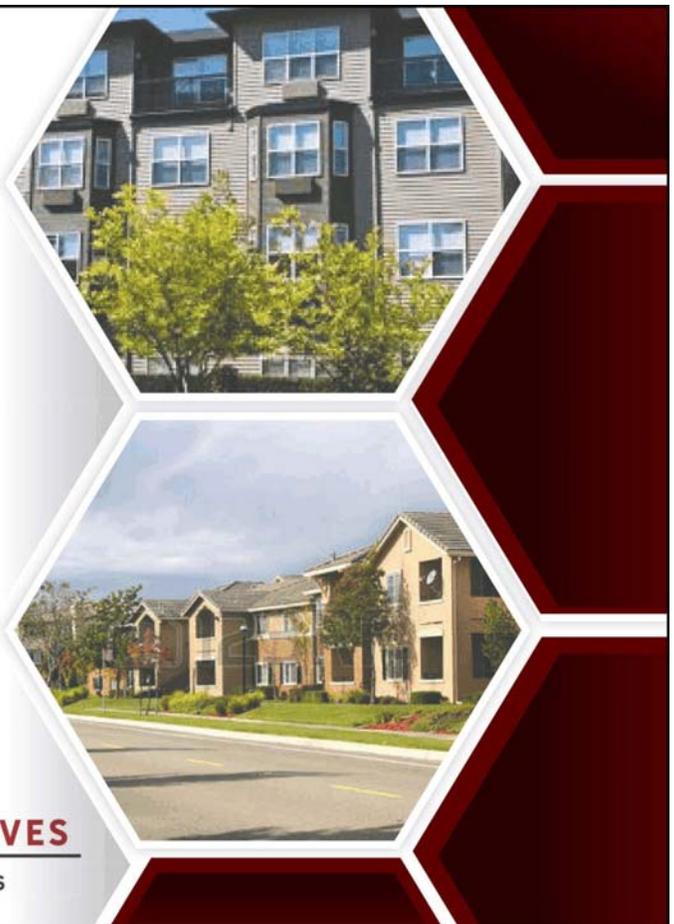
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