



# 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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## Heavenly Tenants

The phrase "absentee landlord" in a homeowner association context conjures up images of the "tenant from hell" and an owner who could care less. However, generally speaking, both the landlord and tenant want the highest and best returns on their investments. What benefits the homeowner association will also benefit them.

The board can take some steps that will help assure a more successful tenancy. For one, it is reasonable to want tenants and landlords to comply with the rules. Of course, the tenant has to know what they are in order to do that. Remind the landlord that the tenant is bound by the same rules as owners and require that the HOA rules are part of every Rental Agreement. It's up to the landlord to comply and failure to do so can be a fineable violation *against the landlord*. Include renters with other residents who receive information about the rules.

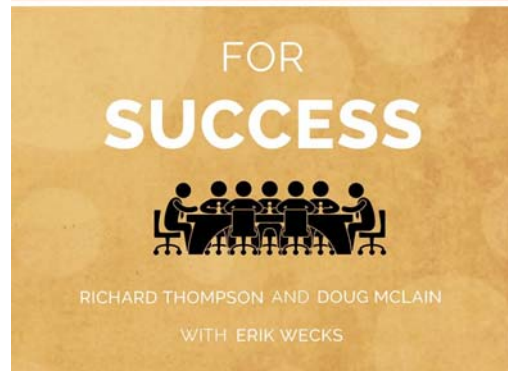
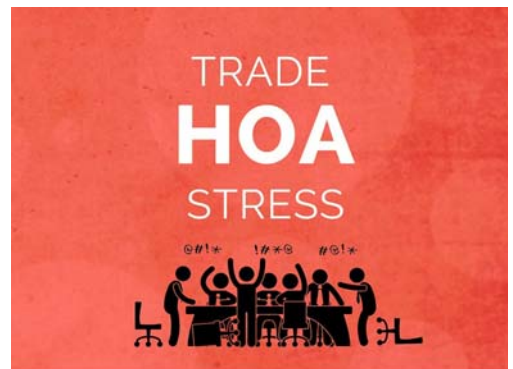
Landlords should be required to provide the board with:

- ☞ Name of the tenant and contact information.
- ☞ Vehicle information (make, model, plate number).
- ☞ Copy of the Rental Agreement that references the HOA rules as a condition of the agreement. (This is very important because it places the burden on the landlord to advise the tenant of rules and shows that the tenant received that information.)

While the HOA cannot require it, common sense and good management practice indicate that landlords should also:

- ☞ Perform credit and background checks on prospective tenants.
- ☞ Check several previous landlord references (HINT: The most recent landlord may have a vested interest in getting this tenant out.)
- ☞ Have read and understand the state's landlord-tenant laws, and
- ☞ Identify all occupants in the lease by name to avoid "musical" tenants.

While the landlord is the key to properly framing a tenant's role within the HOA, it's also important that the board, manager and owners refrain from treating tenants like second-class citizens. When treated with respect and like owner members of the community, they usually act the part by taking care of the property and respecting the neighbors. Treat renters like owners and reap tenants from heaven.☺



[www.amazon.com](http://www.amazon.com): 4.6/5 Stars

## Ask the HOA Expert

**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.

**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 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** 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 and others that believe there should be.

**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** 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.

**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](http://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. Old 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. For a sample Collection Policy, see [www.Regensis.net](http://www.Regensis.net) Policy section. 🏠

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### Like Herding Cats

At times, it can appear that trying to unify the board of a homeowner association is like herding cats. Freedom of expression is what America is all about, right? Well, yes and no. While it's true each citizen is allowed freedom of thought and expression, having a group of special interests fighting over the same turf is contrary to the interests of the homeowner association at large. It is up to the president to build a team, a coalition that can prioritize and get the job done.

Coalitions take the strengths of differing viewpoints to accomplish a unified result by focusing on a common objective. In the case of homeowner associations, the primary objective should usually be to maintain and protect the members' property values. This is the "filter" or philosophy by which most decisions are made.

So what does it take to build a coalition of cats? For this, we turn to the

supreme artists of change, politicians. Here's what successful politicians do:

**Don't Wait for Crisis.** Like the Boy Scouts, "Be Prepared" by getting to know your board members personally. Understand their motives for serving. There may be more to it than you imagine. This information could be very useful in the future.

**State Your Purpose.** Establish your "filter" right up front. For example, a good basic filter could be "creating harmony by sustaining property values". This filter allows disagreement on priorities but forces all issues to answer the question: Will this action sustain our property values and create harmony?

**Partner with the Opposition.** Look for someone that wouldn't be a natural partner. Be prepared to support some of their issues with the expectation that they will do the same for you. Those in the middle will be naturally drawn into the cooperative spirit.

**Focus on Consensus.** When divisive issues begin to take center stage, it's time to refocus the group on the priorities which hold clear consensus. This may require diversionary tactics. For example, if a director or homeowner demands satisfaction on some divisive issue, appoint that person chair of a committee to "research" the issue by polling the owners. Ask for a written report with recommendations gleaned from the poll. This method shows clear concern for the divisive issue without endorsing it. And, in the vast majority of cases, the issue will vanish when the committee chair is actually faced with the prospect of building real consensus among owners. Talk about herding cats!

**Sell the Vision Thing.** Create some bigger than life goals for the board to accomplish. Instead of just sustaining property values, cast a vision that will *increase* them. For example, in older communities, signage gets tired, building colors become dated and newspaper boxes and illegal signs leer like ugly weeds. Suggest bringing in a color consultant from the local paint supplier to provide contemporary color combination alternatives. Have color boards prepared and get the owners to



vote on their favorite. Declare war on the trashy signs, newspaper boxes and rid them from your community. Vow to unclutter and bring a fresh clean look to the community and set a timetable to do it. The Vision Thing is contagious, especially when folks begin to see results.

Herding cats and coalition building has everything to do with moving forward, not merely treading water. Cats stay interested when there is movement. Be a lion tamer. Round up those cats, crack the whip and watch them purrrrrrrrrr. 🐾

## Crystal Balling

A fortune teller asked me to gaze into her crystal ball. “I see wear and tear in your HOA’s future. I see a new roof will be needed. I see cracking paint and asphalt in need of repair. I see (*gasp!*) a depleted reserve fund!”

It doesn’t take a fortune teller to predict that common elements are going to wear out and it doesn’t take a crystal ball to predict that HOAs are going to need money and a plan to fix them. So why do so many HOAs fail to properly plan for these predictable events and expenses?

The truth is that too many HOA boards are busy putting out this year’s financial fires and haven’t the time to think about next year and beyond. Remember, “it’s hard to drain the swamp when you’re up to your behind in alligators”. In other words, it’s easy to lose track of long term goals when you get sidetracked by more immediate demands. Putting out fires is what HOAs do, right? The poorly run ones seem to do just that.

HOAs are no different than any other business. Those that are successful engage in long range planning. Those that fail to plan fend off disaster after disaster and board members come and go through a revolving door. No real magic here. To know where you are going, you have to have a destination in mind. In spite of bumper sticker wisdom, those that wander really *are* lost.

So back to the HOA scenario. When a homeowner association doesn’t have the funds to handle a major repairs, they defer those repairs until the funds are available. Of course, money doesn’t grow on trees and without a plan to collect more money, band-aiding and deferring become the default reality and slippery slope.

How do you steer your HOA back up to high and stable ground? The first step is to review your reserve study. “What’s a reserve study?” you say. A reserve study identifies all common element components that have useful lives between 2 and 30 years like the roof, fences, decks, paint, paving, etc. The average condominium has 15-30 components. The average high rise condo can easily have 100. And HOAs that own golf courses and marinas can have many more. Regardless, a reserve study is customized to the HOA in question.

SIDEBAR: “But our condominium is small”, you say (meaning, “why is a reserve study even necessary in our case?”) It’s basic math: The more people you have to share

the cost, the less the cost per person. Smaller HOAs have a *greater* need for reserve planning because the cost per person is greater.

After the component list is determined, a current repair or replacement cost must be determined for each as well as the remaining useful life. With this information and the current inflation factor, a funding plan can be made to instruct the board how much money to collect and set aside each year to meet future financial needs.

A reserve study should be performed by a professional since evaluating condition of components and establishing useful lives and current pricing takes special training that few boards have. The professionals carrying the highest credential in the industry, the PRA (Professional Reserve Analyst), belong to the Association of Professional Reserve Analysts. A list of PRA members and contact information can be found at [www.apra-usa.com](http://www.apra-usa.com)

Rather than crystal ball your future, get a proper reserve study done and follow the funding and schedule recommendations. Leave the crystal balling to Lady Luck. 🐾

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## Change is Inevitable

There is an old saying that goes “change is inevitable except from a vending machine”. But 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. But change orders are sometimes necessary since it's impossible to identify all of the underlying conditions in a building 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?

Many 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.

**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.

Unexpected problems aside, 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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### Speed Demons

Drivers who do not obey the speed limit within a homeowner association can be a deadly problem. Speed limits are designed to keep residents safe. Factors such as street location, street size and number of vehicles per day are all used to determine the safest speed vehicles should travel. The board has a duty to take reasonable measures to protect the residents. Here are some ways to address this issue.

1. Create a Traffic Safety Committee to research the speeding problem and provide solutions to reduce speeding.

2. Check with your city to find out if they have a speed awareness or speed reduction program.

3. Remind the members using your newsletter, website, bulletin boards and notices.

4. Place a speed radar unit on streets where there is a speeding concern. They display each passing driver's speed to remind them of the speeding issue. Some municipalities will provide this equipment free or for rent. You can

purchase your own unit on the internet if you have an ongoing need and multiple locations to monitor. Some units come solar powered.

5. Make sure speed signs are posted and clearly visible. They can be purchased on the internet in a variety of sizes.

6. Use speed humps, traffic circles and traffic diverters. Your local municipality will have specifications and requirements for these speed reducers. You will likely need a permit to install them.

7. If you have private streets and posted speed limits, fine repeat offender owners after written notice. If streets are public, ask the police to monitor areas of concern. If the won't, use the radar option. It does work.

Speed demons in a homeowner association are an accident waiting to happen. Use these "pitchforks" to remind them that there will be hell to pay if they don't change their evil ways. 🗺️

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### No Fault Asphalt

Asphalt paving is a common road and parking lot surface in homeowner associations. While cheaper to install than concrete, it must be regularly maintained to achieve its longest useful life. Asphalt has two major weaknesses that limit its useful life:

**1. Poor resistance to UV radiation (sunlight).** Asphalt pavement is a combination of rock, sand and liquid asphalt that binds everything together. UV radiation breaks down the asphalt glue so that it no longer hold the rocks and sand together, gradually eroding the top surface. The most obvious sign is the gradual change in color from black to gray. Next, the asphalt begins to look rough and piles of sand appear in the low areas of the parking lot. In



the later stages, the bigger rocks fall out. Because the asphalt is oxidizing under the UV radiation, it loses its flexibility. Flexibility is extremely important because asphalt can take great loads and bounce back to its original condition. As asphalt loses flexibility it becomes brittle, cracks and breaks.

**2. Poor resistance to petroleum products.** Petroleum products like oil and gas cause damage since asphalt is a petroleum based product. Gasoline and oils will dissolve the asphalt, soften the structure and cause major damage to asphalt.

Based on the poor resistance to UV radiation and chemicals, it is logical to conclude that some sort of coating should be used to protect the asphalt from the harmful elements. Asphalt can be effectively protected by using a seal coating which acts as a barrier between the harmful elements and the asphalt. A coal tar emulsion sealer is highly resistant to water, gas and oil, salt, chemicals and UV radiation.

Before seal coating, the asphalt must be cleaned to be free of all dirt, vegetation, and other foreign debris using blowers, sweepers, brooms, and sometimes high pressure washers. Once the pavement is cleaned, existing oil spots should be primed so that the sealer will adhere. Normally two coats of sealer are applied by squeegee or spray. Once the seal coating is completed, it is very important to keep traffic from the sealed surface for 24 hours. Traffic before 24 hours will cause premature wear and increased tire marking. During this 24 cure period the striping can be accomplished so that after the 24 hours, your parking lot is completely ready for traffic.

Another great asphalt preventive maintenance is crack sealing which should be done in conjunction with seal coating. If cracks are left unattended, water is able to penetrate to the base to destroy its strength and load bearing capabilities. It is evidenced by "alligator" cracking, sunken areas and potholes. Cracks at least 1/8" or wider should be treated with a hot poured

crack sealant which remains effective for 3-7 years.

Seal coating and crack sealing can double or triple the useful life of the asphalt at a fraction of cost of an overlay. Seal coating also gives great curb appeal and the impression of good overall maintenance. There is much to gain by caring for paving. Engage in no fault asphalt maintenance practices.🚧

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### Cog in the Wheel

Ever feel overwhelmed and insignificant? Our unfulfilled dreams can leave us dazed and confused. What's it all about anyway? We pigeon hole our minds and misplace our childlike imagination. Instead of bright horizons, we see impenetrable walls...and a sense of hopeless. But take heart! Remember who you are and where you hope to go:

We are the music-makers,  
And we are the dreamers of dreams,  
Wandering by lone sea-breakers,  
And sitting by desolate streams.  
World-losers and world-forsakers,  
Upon whom the pale moon gleams;  
Yet we are the movers and shakers,  
Of the world forever, it seems.

With wonderful deathless ditties  
We build up the world's great cities,  
And out of a fabulous story  
We fashion an empire's glory:  
One man with a dream, at pleasure,  
Shall go forth and conquer a crown;  
And three with a new song's measure  
Can trample an empire down.

We, in the ages lying  
In the buried past of the earth,  
Built Nineveh with our sighing,  
And Babel itself with our mirth;  
And o'erthrew them with prophesying  
To the old of the new world's worth;  
For each age is a dream that is dying,  
Or one that is coming to birth.

"Ode" by Arthur O'Shaughnessy 🚧

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### Riding a Dead Horse

Indian tribal wisdom says that when you discover you are riding a dead horse, the best strategy is to dismount. However, in some homeowner associations, "improved" strategies have been developed:

- ★ Buy a stronger whip
- ★ Change riders
- ★ Say "This is the way we always have ridden this horse"
- ★ Appoint a committee to the study the horse
- ★ Arrange to visit other sites to see how they ride dead horses
- ★ Modify the standards to include riding dead horses
- ★ Create training sessions to improve riding ability
- ★ Compare the state of dead horses in today's environment
- ★ Pass a resolution declaring: "This horse is not dead"
- ★ Blame the horse's ancestry
- ★ Harness several dead horses for improved performance
- ★ Declare that "No horse is too dead to beat"
- ★ Provide additional funding to increase the horse's performance
- ★ Do a study to see if a contractor can ride it cheaper
- ★ Declare the horse is better, faster and cheaper dead
- ★ Form a committee to find uses for dead horses
- ★ Revisit the performance requirements for dead horses
- ★ Elect the dead horse as board president

*From an anonymous but very wise source 🚧*

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