



# The Regenesis Report



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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## Nailing It

One of the earliest advocates of preventive maintenance was Ben Franklin. He wisely wrote: "A little neglect may breed mischief...for want of a nail, the shoe was lost; for want of a shoe the horse was lost..." Old Ben nailed what happens when seemingly minor things are overlooked. Little things have major impact on the assets of a homeowner association. For example, a small lack of flashing can lead to major dryrot structural problems and big bucks.

Preventive maintenance is critical to managing an HOA's assets. When executed properly, it extends the useful life of buildings, grounds and equipment. S-t-r-e-t-c-h-i-n-g out useful lives means s-t-r-e-t-c-h-i-n-g the HOA's money. And it substantially reduces downtime from component failures and equipment malfunctions. Preventive maintenance involves fixing something *before* it breaks. Here are five objectives for a every preventive maintenance program:

1. To perform maintenance that keeps the property safe and functioning.
2. To promote the most effective and efficient use of resources.
3. To provide an accurate way of estimating the human resources needed for proper operation and maintenance.
4. To determine funding requirements and long-range planning projections.
5. To provide a way to evaluate the maintenance effort.

Preventive maintenance programs are common with elevators, HVAC and pool equipment, usually because there is a service contract. Other components, like paving, roofing, decks and paint require monitoring, money and planning must be done thoughtfully.

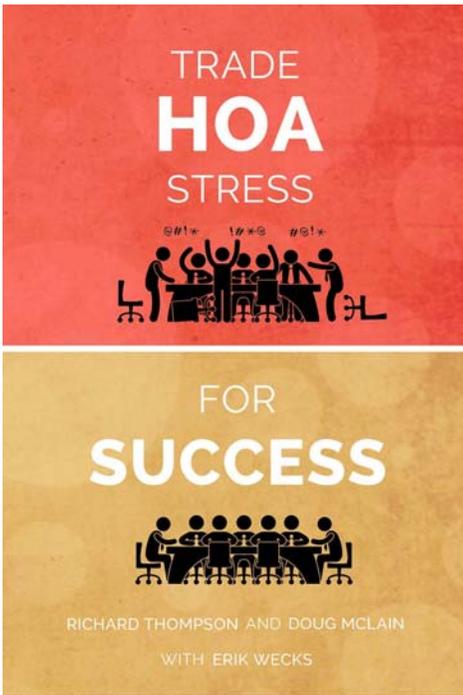
Functional obsolescence is also a legitimate concern. Lack of parts, improvements in energy efficiency, computerization and changes in fire and building code may make

expensive equipment obsolete even though it's working just as designed. This is particularly applicable to elevators, boilers, pumps and HVAC. Buying new equipment is often a great investment in reduced operating costs. For example, by replacing all common area lighting with LEDs, the light level will be significantly increased, the energy consumption significantly reduced and the useful life of each bulb extended by 10-15 times thereby saving an enormous amount of labor costs. Rather than waiting for each bulb to burn out, it makes enormous sense to replace them all...*today*. Within 12-18 months, the cost will be recouped in energy savings and then, it's money in the bank.

So, what is the best way to address major preventive maintenance? Two words: Reserve Study. A Reserve Study identifies all the significant components that the HOA is responsible to maintain, assesses current condition, cost of repair and replacement and charts a 30 year maintenance plan to keep the components in their best condition.

The Reserve Study includes interval maintenance so components survive to a ripe old age. Take paving (please!). If cracks, minor repairs and sealcoating are performed every three to five years at about 35¢/square foot, the pavement will not require a major overlay (about \$2/square foot) for 30 years. If this relatively inexpensive preventive maintenance is not done, major repairs will be required much sooner which are significant and costly. Pay a little to save a lot.

A Reserve Study will also guide the board how to systematically accumulate funds *without using special assessments*. A proper funding plan will have *all* owners contribute a fair share over the time line. No one will get a better deal than anyone else and the money will be there when needed. The Reserve Study is absolutely the best way to prepare for a future which will certainly come to pass. Remember Ben's nail analogy. Neglecting the little things has a way of causing great calamities to befall the HOA. 🗿



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

### Ask the HOA Expert™

**Q** I'm trying to advise an HOA client on what a good reserve balance should be for an HOA. What is the best formula to use?

**A** The answer to that question is "There is no such formula." To arrive at the answer requires performing a reserve study that identifies the HOA's common element components that have a 2 to 30 year useful life. Each component is then measured, assessed for current condition, a useful life assigned to it and a current cost of repair or replacement given to it.

This information is then projected over a 30 year time frame along with the current inflation rate and rate of return on invested funds. The result is the amount of money that must be contributed each year by the owners to ensure that adequate funds are there when the various events come due. For example, if a roof has a 20 year life and a current replacement cost of \$100,000, \$5,000 should be reserved each year. The same process is used for all components. If reserves are funded each year following this example, they are 100% funded.

Since inflation, return on investment and cost of repairs and replacement are

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a moving target, this reserve study needs to be updated every year and a site inspection of the components is recommended at least every three years to verify component remaining useful lives and keep the projections accurate.

The goal should be 100% funding which is fairest to all members. If reserves are less than 100% funded, the annual contribution needs to be increased to bring it back in line. That is why the annual update is so critical to keeping the study accurate.

**Q** Our condominium was built in the 1960s. The windows are single pane and not energy efficient. The HOA has a central boiler heating system and provides heat to all units. An engineer was hired to look at the window performance and he concluded that the HOA could save a great deal of money on heating if the older windows were replaced with energy efficient windows.

The governing documents indicate that the individual unit owners are responsible for unit windows. A motion was proposed at the annual meeting that all windows be replaced as recommended with costs to be assessed to each owner according to the usual HOA fee formula.

Those that voted against the motion said the vote carried no authority since the governing documents said unit windows were a unit owner's responsibility. Is this correct?

**A** There are several issues to consider when the homeowner association involves itself in a repair or replacement of windows that are a unit owner's responsibility:

1. Where the HOA pays for heating and old windows waste heat and increase energy cost for all owners, there is a compelling reason to reduce an unnecessary expense. Moreover, the energy savings of installing new windows often produces a quick payback of 5-10 years. The payback period could be even shorter if your state offers rebates or tax credits that the individual owners can take advantage of. If those rebates or credits do exist, make sure that the contractor

structures the project properly so that the unit owners can receive the benefits since the HOA itself usually cannot qualify.

2. As long as the vote was done properly (all owners received advance notice of the proposed motion) and the required number of votes was received as described in the governing documents, the HOA indeed has the authority to organize and oversee a full window replacement project on behalf of the unit owners.

3. Replacing all the windows as one project could save up to half the cost of what individual unit owners would pay.

4. With proper project specifications and oversight, the HOA can better ensure that a licensed, bonded and insured contractor is used, that the installation is done according to manufacturer's specifications and that a manufacturer's and contractor's warranty are received.

5. Since windows are a unit owner's responsibility, replacement costs should be distributed according to each unit's actual window cost and not according to an HOA fee formula which is usually equal or based on square footage.

This is a wonderful example of win-win-win-win. The HOA can reduce project costs, energy costs will be significantly reduced, all owners will benefit in the future and prospective buyers will perceive greater value in their purchase.

**Q** Our homeowner association's governing documents include a provision that "No unsightly articles shall be visible from a home's interior from any other portion of the development". The term "unsightly articles" seems to be something that could be broadly interpreted.

**A** Usually, the governing documents are a bit more specific about things like this. If they aren't, the board should enact a policy that interprets what "unsightly articles" means. This interpretation does not need to be exhaustive but should give guidance on the types of things that qualify. This

policy should clarify 90% of the enforcement issues and the board can then focus only on the 10% of those issues that raise their “unsightly” heads.

As with all rules, the board should circulate the proposed rule to the members for a 30 day review and comment period before making a formal decision. That way, there is a better chance of buy-in.

**Q** Our board is trying decide the proper way to handle an issue. At our recent annual meeting, a motion was made on something that was not on the agenda for the meeting. The president at the time allowed the motion to be made, seconded and voted upon. There was not even a sufficient number of owners there to constitute a quorum. The homeowners not present had no idea this was being voted on. Was this vote proper?

**A** There are several issues to consider when voting at an annual meeting:

1. If there was not a legal quorum at the meeting, no business of any kind can be conducted and that includes election of directors.
2. Any motion to be voted upon at an annual meeting needs to be noticed to all members in advance of the meeting so that they have an opportunity to vote.
3. The president allowing the motion to be made does not make the matter acceptable or legal. Any member, whether they attended the meeting or not, can demand that this vote and any other business transacted at this meeting be nullified immediately. If the demand is not acknowledged by the board, an attorney letter may help. Neither the president or the board is above the requirements of governing documents.

**Q** Our board requested a special assessment of \$7,000 for roof repair and exterior painting. After failing to get the required vote, the board increased the monthly fees by 33%. Can it do that?

**A** The answer depends on requirements of the governing documents. Sometimes they require an affirmative vote of the members to authorize a special assessment. The advantage of using a special assessment to pay for renovation is that it does not impact the regular HOA fees. But if the members fail to approve the special assessment, the board has little choice but to gather the funds by way of the HOA fees.

But there is another problem. Special assessments are triggered by the lack of reserve funds. HOAs that routinely get renovation money by way of special assessments fail to recognize that they are unfair to those that have to pay them and difficult to collect from those in financial straits. Since renovations can be predicted many years in advance, the funds to pay for them should be paid by all members monthly (normal for condominiums) along a 30 year time line (usual projection period) so that the money is there when needed. It sounds like your HOA lacks a reserve plan and fails to put

money in reserves systematically so it leaves the board with the two alternatives you describe, neither of them appealing.

As a general guideline, the average condominium should be reserving 25-35% of the annual budget. If you are putting aside much less, you’re cruisin’ for a bruaisin’.

Your HOA needs to break this boom or bust approach to reserve funding. The board needs to order a reserve study from a qualified reserve study provider. Members of Association of Professional Reserve Analysts [www.apra-usa.com](http://www.apra-usa.com) carrying the Professional Reserve Analyst (PRA) credential demonstrate the experience and proficiency to provide what you need.☺

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## Dealing with a Crazy Board

In our 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 homeowners.

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 Dan Zimberoff of Barker Martin* 

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## **Chiropractical Amendments**

A homeowner association's (HOA) governing documents are the backbone of the organization. As chiropractors can demonstrate, adjusting the backbone can produce beneficial results. Adjusting or amending an HOA's documents impacts both legal and practical considerations. Since amending them is both time consuming and expensive, the reasons to do so should be compelling such as:

1. To delete or add use restrictions
2. To conform with federal or state law
3. To correct clerical errors, or
4. To eliminate a restriction in violation of the Fair Housing Act.

There are two ways to amend documents. The first is to amend individual provisions by editing, deletion or addition. The other way is to "amend and restate" the entire set of documents. Legally, "amended and restated" documents are simply an amendment to the existing documents. Practically speaking, they produce a new, organized and easier-to-read set of documents.

A restatement is a much more extensive, time-consuming and expensive project than a partial

amendment. While not appropriate for every situation, an amendment and restatement should be considered if current governing documents have either been amended many times or that they are cumbersome or confusing. It's also appropriate if the HOA is contemplating a substantial number of changes at one time.

Before beginning any amendment project, an important consideration is what level of vote is required to pass the amendment. Requirements are usually found in the governing documents themselves or may be governed by statute. If the amendment requires a high percentage of owner approval, it may be prudent to forego the amendment since the chances of passage are remote.

Here are some general recommendations:

**1. Amend the Amendment Procedure.** If your documents have difficult or onerous amendment procedures, consider "amending the amendment procedure" to ease future changes. Provisions that require a super majority (2/3rds or more of the membership) to approve make amending almost impossible. This restriction can produce catastrophic results if the board needs a super majority to set a reasonable budget to run the HOA. Consider a procedure that allows an amendment by a simple majority vote at a valid member meeting.

**2. Withhold Controversial Changes.** If you are trying to pass several amendments simultaneously, withhold controversial amendments that may serve to defeat otherwise approvable changes. Present controversial changes individually at a later date so that you have the opportunity to adequately focus on the issues surrounding that amendment.

**3. Retroactivity & Grandfathering.** Amendments should not be retroactive, such as banning existing pets, and should provide for a "grandfather" provision which permits existing violations for a reasonable time period

so compliance can take place. This is particularly important when it comes to imposing rental or pet restrictions.

**4. Developer Language.** Resist the temptation to amend simply to delete references to the original developer. These amendments serve little purpose.

**5. Member Forum.** Consider holding a special meeting to answer questions and address concerns regarding proposed amendments before they come up for vote. Educating the membership can go a long way in helping to get amendments adopted.

**6. Use a Lawyer.** Amending governing documents should be done only in consultation with an attorney knowledgeable in homeowner association law. Lawyers know things that the board does not and can make sure the process is done properly, including recording the documents at the right place and in the proper manner.

**7. Don't Amend at All.** The governing documents often give the board the authority to enact policies that are "in keeping" with the governing documents. Sometimes the objective can be accomplished without amending the documents.

**8. Use Plain English.** User friendly documents are more likely to be read and understood. Legalese interferes with those concepts.

Performing a therapeutic "adjustment" can streamline policies, rules and procedures and raise the level of compliance. Thoughtful amendments make for a kinder HOA. 🐾

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## No Barking Zone

When neighbors live in close proximity like in a homeowner association, they are bound to step on each other's toes from time to time. Loud parties come to mind. And, oh yes, that dog that barks incessantly from morning to night. When the offending dog owner is confronted, the standard response is, "MY dog doesn't bark." As the saying goes, "If a dog barks in the forest and there is no one there to hear him, is he still a bad dog?" This is one immutable law of nature: ALL dogs bark when their owners are away.

Whether in a single family homeowner association or a common wall community with paper thin walls, barking dogs are a common complaint that come to lie at the board's or manager's door. When they do, decisive action is called for. Traditional solutions include bark collars which shock the dog, prong collars to restraint aggression or total removal of the dog from the HOA.

However, new and effective training techniques have been developed that offer humane and lasting solutions to various dog discipline problems. One company that has received rave reviews is Barkbusters, a franchise operation now found in many areas of the country. Barkbusters originated in Australia and has developed in-home dog training to solve behavioral issues such as:

- Aggression towards people or other animals.
- Barking
- Jumping up on people
- Scratching and whining at the door.
- Teaching a dog to stay on command, come when called and walk on leash without tugging.
- Setting off-limits areas for a dog.
- Reducing separation anxiety.

The training methods used by [www.Barkbusters.com](http://www.Barkbusters.com) are pain-free and treat-free. The methods are based on canine communication and pack behavior. They teach proper use of body language and voice tones to get the dog to focus and obey. The training comes with a lifetime guarantee.

Does your HOA have barking problems? Don't roll-over for half-barked solutions. Sit up and bite into a real solution. Create a No Barking Zone. Good boy! 🐾

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## Beautiful Barriers

Robert Frost's poem *Mending Wall* explores how people with different temperaments and territorial natures are able to cooperate and work together. He sums it up with "Good fences make good neighbors". In common wall homeowner associations, this observation resonates loudly. HOA barriers abound in a plethora of options including chainlink, brick, stone, wood, stucco, vinyl, concrete and siding.

Besides the visual differences of these barriers comes practical considerations. In common wall communities like condominiums, the HOA is responsible for the maintenance, repair and replacement of such structures. Materials like chainlink are inexpensive, have a long life and low maintenance, but aren't very attractive and don't afford privacy. Sided walls are expensive to build and maintain and are subject to dryrot in wet climates.

There is a great alternative which is attractive, low maintenance and long lived called the "Good Neighbor Fence" (Frost would be proud). This fence is built of redwood or cedar and pressure treated wood (all rot resistant) with alternating boards on each side so that the fence looks the same on both sides. The open weave design blocks views

but allows air to pass through for ventilation. This design also reduces the effects of high wind that could damage or blow the fence down.

Leaving the fence unpainted has a number of advantages since painted fences peel and need frequent touchup and repainting. Also, painted wood fences do not last as long as an unpainted Good Neighbor Fence. Cedar or redwood will last 15 to 25 years when properly built and left unpainted. Clear sealer can be applied to help retain the wood color but this does nothing to extend its life. As with any wood fence, the fence boards should have at least 6" clearance from the dirt.

The Good Neighbor Fence looks great, is ideal for replacing other types of fences and costs \$25-\$35 a linear foot. Based on looks, price and durability, this is a seriously beautiful barrier.🌲

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## Silent Sermon

A member of a certain church who previously had been attending services regularly stopped going. After a few weeks, the pastor decided to visit him.

It was a chilly evening. The pastor found the man at home alone, sitting before a blazing fire. Guessing the reason for his pastor's visit, the man welcomed him, led him to a comfortable chair near the fireplace and waited.

The pastor made himself at home but said nothing. In silence, he contemplated the dance of the flames around the burning logs. After some minutes, the pastor took the fire tongs, carefully picked up a brightly burning ember and placed it to one side of the hearth all alone then he sat back in his chair, still silent.

The host watched all this in quiet contemplation. As the one lone ember's flame flickered and diminished, there was a momentary glow and then its fire

was no more. Soon it was cold and dead.

The pastor glanced at his watch and realized it was time to leave. He slowly stood up, picked up the cold, dead ember and placed it back in the middle of the fire. Immediately it began to glow, once more with the light and warmth of the burning coals around it.

As the pastor reached the door to leave, his host said with a tear running down his cheek, "Thank you so much for your visit and especially for the fiery sermon. I will be back in church next Sunday".

We live in a world today which often says too much with too little. Consequently, few listen. Sometimes the best sermons are the ones left unspoken.🌲

## Davebarrisms 8

We journalists make it a point to know very little about an extremely wide variety of topics; this is how we stay objective.

We operate under a jury system in this country, and as much as we complain about it, we have to admit that we know of no better system, except possibly flipping a coin.

We'll try to cooperate fully with the IRS, because, as citizens, we feel a strong patriotic duty not to go to jail.

What I look forward to is continued immaturity followed by death.

What I want to know is: Why is it important to have visible stomach muscles? I grew up in an era when people kept their stomach muscles discreetly out of sight.

What may seem depressing or even tragic to one person may seem like an absolute scream to another person, especially if he has had between four and seven beers.

Not all chemicals are bad. Without chemicals such as hydrogen and oxygen, for example, there would be no way to make water, a vital ingredient in beer.

Sharks are as tough as those football fans who take their shirts off during games in Chicago in January, only

more intelligent.🌲

## Bob's Rules of Disorder

Homeowner association meetings are not always run like well oiled machines. Sometimes, they can get downright nasty. Here are some suggestions on how to bring yours to a grinding halt:

### Obtaining the Floor

1. Member shall address the Chair by rising and yelling, "Listen you (insert description of the Chair's ancestry and intellectual capacity).
2. Person who shouts the loudest shall have the floor.
3. A louder person may interrupt the speaker at any time and take the floor.

### Making Motions

1. Motions may be prefaced by an obscene gesture or speculative statement about the occupation of a director's ancestors.
2. No motions shall be made which include a rope, horse and tree or bird plumage and a petroleum byproduct unless such has been approved in the budget.
3. Following the statement of the motion, the member shall make facial gestures towards two or more members. The Chair shall then repeat the motion and issue a statement suggesting the member either engage in self procreation or immerse forthwith in an aqueous body.

### Voting

1. Members shall be allocated votes in proportion to their body weight and strength.
2. A group whose combined weight is greater than the combined weight of any other group shall be defined as the "majority".
3. The majority rules, except when the Chair sides with the minority.
4. The decision of the Chair is final, regardless of the will of the majority.

### Appealing the Chair's Decision

1. When any member objects to the Chair's decision, the Chair shall respond, "So sue me, you jerk."
2. If a member, in response, hurls a ripe garden product or other object, the Chair shall immediately declare the member to be out of order.
3. The Chair may, at his discretion, hurl an object of equal or greater weight and ripeness at the offending member.🌲

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