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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 interest to homeowner associations 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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A Fortune to Tell

A fortune teller asked me to gaze into her crystal ball. “I see wear and tear in your condominium’s future. I see a new roof will be needed. I see cracking paint and asphalt in need of repair. I see (*gasp!*) a special assessment to pay for it all!”

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.

“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.

While there is no state or federal requirement, the 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 members and contact information can be found at www.apra-usa.com

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

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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 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 1 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 renovation 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 fully funded.

Since inflation, return on investment and cost of repairs and replacement are a moving target, a reserve study needs to be updated every year and a site inspection of the components is recommended at least every three years to keep the projections accurate.

The goal should be full funding which is fairest to all members. If reserves are less than full 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 homeowner association's governing documents include a provision that "No unsightly articles shall be permitted to remain on any home so as to be visible from any other portion of the development". The term "unsightly articles" seems to be something that could be broadly interpreted to anything visible from the street.

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 provide an exhaustive list but it should give the owners 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 proposal to the members for a 30 day review and comment period before making a formal decision. That way, there is a presumptive buy-in.

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Q At our annual meeting, a motion was made on something that was not on the meeting agenda. The president allowed the motion to be made, seconded and voted upon. There was not even a quorum of owners there. The homeowners not present had no idea this was being voted on. Was this vote legal?

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. It is not that common to require a vote of the members to authorize a special assessment or to approve the annual budget. Yours is an exception.

Since the members failed to approve the special assessment, the board has little choice but to gather the funds by way of the HOA fees. The advantage of using a special assessment to pay for renovation is that it does not impact the regular 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 in a monthly way (usual way 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.

There are other compelling reasons to reserve. Underwriters of many condominium loans (FHA, Fannie Mae and Freddie Mac) require a current reserve study and proof that at least 10% of the annual budget is going into reserves. (The average condominium should be reserving 25-35% of the annual budget.) Those that fail to comply lose critical financing options.

Your homeowner association needs to break this boom or bust approach to major renovation projects. 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 carrying the Professional Reserve Analyst (PRA) credential demonstrates the experience and proficiency to provide what you need. 🏠

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Win-Win-Win-Win

While modern construction techniques improves energy efficiency and construction design when properly installed, older building suffer from old design and details that cost owners a lot of money for heating and cooling.

Consider the scenario of a condominium building built in the 1950s. The windows are single pane and extremely energy inefficient. The building has a central boiler heating system that provides heat to all units. A specialist is hired by the board to look at the window performance and he recommends that the HOA could save a great deal on money on gas if the original windows are replaced with energy efficient windows.

The governing documents commonly indicate that the individual unit owners are responsible for repair and replacement of unit windows. A

motion is made at the annual meeting that all windows be replaced as recommended with costs to be assessed to each unit owner according to the usual HOA fee formula.

Those that vote against the motion say the vote carries no authority since the governing documents state that unit windows are a unit owner's responsibility. What to do?

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

1. When 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. The energy savings of installing new windows often produces a quick payback of 5-10 years. The payback period could be even shorter if the 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 cannot qualify.

2. As long as the vote is done properly (all unit owners receive 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 ensured contractor is used, that the installation is done according to manufacturer's specifications and that a manufacturer's and contractor's warranty are received.

Unless the replacement cost of each unit's windows is identical, replacement costs should be assessed according to each unit's actual window

cost and not according to an HOA fee formula.

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. This is a wonderful example of win-win-win-win. 🏠



www.amazon.com: 4.6 Stars

Change is Inevitable

There is a saying that "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 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. However, change orders can be a sneaky way for unscrupulous contractors to jack up the price of a project they've won with a low bid. Therefore, the key questions are: What are legitimate change orders and how much should be allotted for them?

Some HOA projects run over budget because the firm hired to prepare the specifications (scope of work), budget and construction documents for bidding don't spend enough time doing

investigative site work. This leads to money spent addressing overlooked conditions that should have been spotted in advance.

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 10-20% 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 - Rand Engineering & Architecture

Good Looking Hood

One of the advantages of a homeowner association is to keep the hood looking good by enforcing architectural and design standards. These appearance standards are designed to protect the HOA members’ property values. The theory is that if all homes follow the same basic theme, the average home buyer will be willing to pay more.

Non-HOA subdivisions have appearance standards too, but only a civil lawsuit can stop someone determined to violate them. Since most neighbors hate confrontation, appearance standards usually go by the wayside opening the door to the things like RVs parked along side the house, tarped “classic”

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cars and eye wincing paint colors. Thus, the need for appearance standards and the enforcement thereof.

The governing documents usually outline the appearance standards when they are very strict but often say little when they’re not. They may define the standards but not the enforcement method, leaving the board in an awkward position when confronted with multiple appearance “challenges”. This is a great topic for the Resolution Process. Resolutions are board policies that deal with complex issues like collection of money, pets, parking and appearance standards. Resolutions provide a framework to deal with them effectively. By the way, resolutions cannot amend or change the meaning of the governing documents, only expand on their authority. Amending the governing documents requires an appropriate vote of the homeowners.

After your Appearance Standards Resolution is drafted, ask your attorney to review it for compliance with statute and your governing documents. Once drafted, it should be circulated to all the owners for a 30 day review and comment period. The approval process shouldn’t be rushed. Change is difficult for some.

A good way to broach the subject with the membership is to send out a newsletter discussing the reason why: to preserve property values. Consistent appearance standards are in everyone's best interests. Describe how, for example, junk vehicles, unkempt lawns, collapsing fences and weathered or

outlandish paint colors drag property values down for everyone without naming names (Ms. Lavender Chartreuse, you know who you are). Encourage attendance to a special meeting to discuss the Appearance Standards Resolution.

After the new Appearance Standard Resolution is cussed, discussed, amended and approved, it's time to start enforcement. Select the closest equivalent you have to Henry Kissinger and a Mafia Hitman. If you have none of these, after appropriate written notifications, make good use of your attorney to turn up the heat. Never be guilty of selective enforcement. Treat everyone the same.

Appearances do count and it's up to the board to watch dog what happens in the community. Don't wake up one day and ask "Where am I going and why am I in this handbasket?" Protect your HOA appearances by keeping the hood looking good. 🗝️

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The Three Rs

Readin', Ritin' and Rithmatic used to cover what most needed to know, as long as they lived in the "holler". But homeowner associations have their own version of the Three Rs called Rules, Regulations and Resolutions. These are the policies and procedures that define HOA standards. They must comply with state and federal law. For example, the board cannot enact a rule that violates Fair Housing Act.

Rarely if ever are the Three Rs clearly or fully defined in the governing documents. That is by design to allow flexibility and customization. Amending bylaws is tedious and difficult. The Three Rs can usually be modified as needed by the board. The board may use either rules and regulations or resolutions to accomplish this goal. So what's the difference?

Rules and Regulations are used to address rules of conduct. Appropriate topics include:

- Quiet Hours
- Pets
- Parking
- Noise
- Restrictions (use of clubhouse, pool rules)
- Limitations on guest use.

When adopting new or revised rules, it's wise for the board to solicit owner input for a greater degree of compliance. Any proposed rule or regulation must comply with the governing documents. For example, if the governing documents state that guest parking may only be used by guests, a board rule cannot change that. That requires an amendment voted upon by the members.

Resolutions are the preferred method of establishing procedures for the homeowner association. Resolutions come in two types: policy and administrative.

Policy Resolutions define acceptable standards. An example of a policy resolution: Many governing documents are unclear with regard to homeowner association versus owner maintenance responsibilities. Who repairs a water supply line after it enters an owner's unit? Who repairs damage from a flood originating in an upper unit? There are many variations on this theme that could be answered in a policy resolution that defines each item according to who is responsible. This particular resolution directly impacts homeowner insurance and owner responsibilities. Other significant policy resolutions deal with money collection, architectural guidelines and enforcement procedures.

Administrative Resolutions define procedural guidelines, like how to run board and homeowner meetings.

Mechanics of a Resolution. The resolution should first cite the relevant provisions of the governing documents and any applicable state statute, especially those sections which give the homeowner association authority to establish policies. Following the authority section are the details of the resolution. It is highly recommended to

circulate proposed resolutions to the membership for a minimum 30 day period for comment before the board votes on it. Once approved, it should be dated and signed by the board president and the secretary.

The Three Rs can be enacted by the board but amending the governing documents must be approved by the members by the percentage indicated in the governing documents. Getting this vote is often difficult so amendments should not be undertaken lightly. However, if the documents are unwieldy or in violation of the law in some respect, amending may be prescribed. Always consult with an attorney knowledgeable in homeowner association law.

The Three Rs: Rules, Regulations and Resolutions help provide a clear and systematic way to deal with routine issues. Once enacted, they need to be enforced consistently and apply to all members, including the board. 🗝️

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Director Code of Conduct

As a member of a volunteer homeowner association board, it's useful to codify the goals and behaviors an effective director should seek in a Code of Conduct. It not only serves as a constant reminder for those that are serving but can also help screen out candidates with hidden agendas. Consider adopting something like this:

As a director serving the interests of my homeowner associations, I agree to:

Act in the HOA's Interests. Directors will strive for the common good of the homeowner association, foregoing personal interests. Personal agendas will be left at home.

Engage in Lawful Acts. All board actions will comply with the governing documents and the law. To accomplish this requires thoughtful deliberation and input of knowledgeable professionals.

Maintain High Standards of Conduct. Directors conduct should be above reproach and avoid the appearance of impropriety.

Demonstrate Mutual Respect. Directors will address each other and homeowners with respect, even when in disagreement.

Attend All Board Meetings. Effectiveness is based on keeping informed and making informed decisions. This is made possible by attending meetings where decisions are made.

Be Prepared. Directors will come prepared to meetings by reviewing the agenda and related materials before the meeting.

Keep Focused. Directors will listen attentively and courteously to demonstrate respect and willingness to learn.

Maintain Confidentiality. Directors will not share highly sensitive information and respect the privacy of all owners.

Maintain a Supportive Attitude. Directors will encourage owners, employees, managers and contractors to promote better performance and teamwork.

Be Loyal. Directors will respect the authority of the board by not undermining majority decisions and enacted policy.

Respect the Rules. Directors will obey the homeowner association rules to set a positive example for others. Directors are not "above the law."

Pay Assessments on Time. Directors will remain current in all charges and will not expect special treatment.

Promote Harmony. Directors will promote harmony in act, word and deed.

A Code of Conduct controls caustic communications, curtails conflicts and calms cantankerous communities. Adopt one today! 🗳️

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Irreducible Complexity

Those that hold fast to the concept of Darwinist evolution insist that all life evolved from nonliving matter through natural processes. Part of the explanation of extremely complex organisms (like you and me) is that they evolved from "simple" cells. When Charles Darwin was alive, that theory could pass muster since the understanding of cell structure was very primitive. Darwin himself admitted that his theory would rise or fall on the scientific discoveries that followed. He was right and science hasn't been kind to his theory.

As it turns out, even the smallest cells are extremely complex. They have the ability to eat, breath, feel, see, reproduce and a myriad of other functions common to complex organisms like humans. What is more intriguing is that, even at the cellular level, there exists "irreducible complexity". And what does mean? For evolution to work, it relies on minute changes happening over thousands (or millions) of generations over millions of years. Irreducible complexity means there are systems even in cells that are so complex that they simply won't work unless all their component parts are present and working as they should.

Consider the flagellum of a bacterial cell. The flagellum is a rotary propeller device that allows bacteria to move. The flagellum essentially hooks into an organic rotor drive that causes it to rotate in the same way a weed eater does.

Thousands of scientific papers have been written on this subject but not one has ever been published explaining how such a machine could develop under gradual evolution. Irreducible complexity is the real sticking point in evolution and there are untold numbers of examples that confirm it exists. Size clearly has little to do with complexity. Since evolution can't account for

irreducible complexity, there must be another answer.

What would you say to someone that said your computer built itself? "Fool!" you'd say. "Everyone knows that computers are designed by engineers and manufactured under strictly controlled conditions. Even I don't understand how they work!"

Well, a bacterial cell is far more complex than any computer ever built and it replicates itself! If you can't imagine the natural evolution of a machine like a computer, how could something infinitely more complex like a bacteria perform that miracle? And if the evolution of a single cell can't be scientifically proven, how did all the species evolve that depend on that starting point? Exactly.

Our world, indeed universe, screams intelligent design. Where there is intelligent design, there must be a designer of supreme intelligence and power. Since the origins of those designs are beyond our understanding, so is the designer. But I'm okay with that. It gives me comfort to know there is a power holding it all together for me. It helps me sleep a lot better.

For more, read Darwin's Black Box by Michael J. Behe 🗳️

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I appreciate all the great advice over the years.

Bruce Clary - Morris Management

We find The Regenesis Report very interesting and educational.

Joe Cusato - Washington

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