



# 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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## Staking a Claim

In garden or townhouse style condominiums, a curious phenomena takes place: Certain owners feel compelled to stake claim to the common area adjacent to their units. This takes on many forms. Some commandeer adjacent grounds for personal plantings, even running irrigation systems through it. Some expand their patio or deck into it. Some build storage sheds in it or place hot tubs there. Some brazenly fence off "their" yard.

Another form of claim staking involves expanding personal living quarters into attic or crawlspaces when the architecture permits. Unit owners have been known to mole into crawlspaces to build wine cellars, extra bedrooms and storage bunkers. It's not uncommon to find certain residents growing "exotic plants" in the attic, out of sight of drug enforcement. Have you ever seen a strange violet glow coming from attic vents after dark?

Condominium ownership is usually defined in the governing documents as "from the decorated surface of the unit in". Admittedly, condo living is not for everyone. Folks that are used to digging in the dirt and redesigning their home are not going to be comfortable with these boundaries. They crave what Hitler called "lebensraum", more living room. While these folks don't use guns and tanks when they expand, they often feel they have the right to take over whatever common area space adjoins their unit. And sometimes, the board agrees and approves them doing it.

The problem is, neither an owner or the board has the authority to reallocate common area unless 100% of the members agree to it by amending the governing documents. Another more practical consideration is that these modifications often impact the ability of the HOA to properly maintain the grounds and buildings. For example, improperly installed decks are a common source of dryrot to the buildings. Add on rooms in the attic or crawlspace cause additional intra-unit noise and fire hazard potential.

It is very important for the board to understand it's role as Defender of the Common Area. The common area belongs to *all* members and no one member has the right to stake claim to it. Preventing claim staking requires constant

vigilance by the board. Once one unit owner is allowed to stake claim, others will quickly follow suit thinking if it's okay for one, it's okay for all. Soon, there will be multiple violations and the Board will have a heck of a time trying to undo it all. Be watchful and preempt these moves early.

If the horse is already out of the barn and there are already multiple violations, it's time to determine the scope of the problem and prioritize the violations according to flagrancy. Curb appeal issues directly impact market values so violations of this kind you would want to deal with more aggressively. Violations like fencing, decks or storage sheds, or added rooms are the next priority. Minor offenses like owner planting beds, lawn ornaments and furniture are lower priority.

If there are multiple violations of a common sort, it's best to address them simultaneously to avoid the "What about so and so? They have one too" defense. The board should have a cohesive strategy for responding to every violation. It's important that individual board members do not negotiate with violators or give them the impression it's no big deal because this will undermine board authority. Besides, these violations are a big deal and appeals should be addressed only to the board as a whole by holding an appeal meeting with all the players present. That way, when the defense is presented and the board decision is made, everyone is informed.

Some owners may have a valid defense for their violation or have obtained written approval from a prior board. In those cases, the current board should try to negotiate a dismantling date, even if that date is when the owner sells the property. Whatever the outcome is, it should be formalized in a recordable document that is signed by filed against the unit title so future the owner and the board president and buyers are informed of the deal.

Claim staking is as natural as the sun rising. It is bound to happen sooner or later in some form or another. It's up to the board to be aware and prepared to defend the common area from claim jumpers.⚠️

### Ask the HOA Expert

**Q** Our board recently announced plans to begin conducting business via email. Is email a legal method of conducting board business in lieu of holding formal meetings? Can committee business can be conducted via email?

**A** State statutes and governing documents vary on this issue. But email meetings effectively shut out members from the decision making process. Members are entitled to attend meetings and listen to the discussions. While your board may trade information by email, decisions should be formalized at a meeting open to all members.

If the committee doesn't make decisions, as in the case of an Architectural Restriction Committee or Rules Enforcement Committee, it's okay to exchange information by email. Otherwise, meetings should be held so the members can speak to the committee as a group.

**Q** Our HOA is five years old and the board has never sent out any rule violation notices. The new board would like to begin enforcing violations. Can the new board go after homeowner violations that have not been enforced in the past?

**A** The board can request that old violations come into compliance but unless the owner is willing to comply, it will be an uphill battle. Five years is a long time and most courts would likely view it as silent consent by the board or a prescriptive easement (length of time legitimized the illegal installation). The case is stronger if the installation is unsightly, dilapidated or causing damage to buildings or grounds.

The board should prioritize the violations according to severity and deal aggressively with the most blatant. If the owner resists, the board will need to decide whether legal action is

prudent or cost effective. Less offensive violations can be dealt with by getting the offender to sign a recordable document that identifies the property and the violation and states the offending installation must be removed when the property is sold. Most owners view this as getting their way while the board can inform other members the installation is temporary. And when the offending owner sells, prospective buyers will be notified of the violation by way of their title insurance policy disclosures.

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**Q** Our HOA is self managed. We have one owner who is significantly behind in payments and seems unable or unwilling to come current. Our bylaws allow us to use legal means to collect but our question is how do we begin? What type of lawyer would handle this and how does it go?

**A** The board should enact a formal Collection Policy outlining how these things are handled. There is a sample in the Policy Samples section of [www.Regenesis.net](http://www.Regenesis.net). The Collection Policy should include using an attorney to collect the debt if efforts by the board are ineffective. You should only use an attorney that specializes in HOA law and this kind of collection. Collections are often difficult for self managed HOAs since collecting money from neighbors is no

fun. HOAs, regardless of size, should consider using an HOA management company to handle at least finances and collections.

**Q** Our board rescinded Robert's Rules of Order as their parliamentary procedure and adopted an abbreviated version of parliamentary procedure. The board figured the "skinny" version was sufficient and could be amended as needed. In reality, this was a ploy to prevent homeowners from questioning the board's decision making process.

**A** As long as the procedure adopted conforms to the governing documents and state statute, an abbreviated version of Robert's Rules is appropriate as long as it does not stifle debate. The full body of Robert's Rules was intended for trained parliamentarians and large groups like Congress. Insisting that all of Robert's Rules be followed is nitpicking and would surely be used to intimidate the Chair on some issue of little importance.

**Q** Can a board enforce one rule and not another? For example, the CC&Rs restrict parking in a driveway over night. They also restrict adding a room addition without getting an architectural approval. Can an owner in violation for adding a room addition without approval say that he does not have to follow the rules because the parking rule is not enforced?

**A** Not all rules are created equal. As a practical matter, rules issues rarely get into court because of cost, time and emotional effort involved. But when a matter gets into court, anything can happen. So it's always in the board's best interest to enforce all rules consistently so it won't give the judge an excuse to rule against the HOA.

If the board fails to enforce a particular rule like parking in driveways for an extended period of time or is extremely inconsistent about it, a violator might rightly protest being held accountable to that rule but not another rule. One problem is that different boards sometimes enforce rules differently. If a particular board feels strongly that enforcing a particular rule that has long



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gone unenforced is a good thing, the matter should be discussed, ideally, in the annual homeowner meeting and at minimum in a newsletter that clearly informs all owners of the issue and the board's intention to enforce it. Catching folks by surprise is bad policy.

On the other hand, if a rule hasn't been enforced consistently, maybe it isn't needed at all. It's okay to take it formally off the books. Don't just have rules for rules sake. There are enough to follow already.

**Q** Behind one of our buildings, several owners are allowing their dogs to do their business without ever cleaning up. It is unsanitary and downright nasty. Letters have been sent to these owners without any resolution. What steps can the HOA take?

**A** They have been warned. Have the mess cleaned up and bill them for the expense. 🗑️

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## Legal Baker's Dozen

There are times when a homeowner association (HOA) board needs competent advice to make informed decisions. One key area of competency involves matters of law. Since lawyer fees are high, the board needs to be prudent about the reason for ringing them up. Some things to consider:

**Business Judgment Rule.** Directors are protected against personal liability by the Business Judgment Rule which states that they perform their duties in good faith, in a manner believed to be in the best interest of the HOA and with care that a prudent person would use.

**Breach of Duties.** As part of their reasonable inquiry or "due diligence",

boards can seek the advice of legal counsel. Failure to seek advice on an important legal issue that results in damage to the HOA could serve as the basis for an action against the board for breach of their fiduciary duties.

That said, here are thirteen valid reasons to engage an attorney:

1. **Amending Documents.** Whenever the governing documents are revised, legal counsel should be involved in drafting and recording the changes.

2. **Architectural Restrictions.** Failure to enforce or arbitrary enforcement of architectural restrictions can lead to costly litigation. Whenever an architectural dispute arises, legal counsel should be called to assist in proper resolution.

3. **Assessment Collection.** Setting up proper collection policies and consistently following those policies is important to maintaining the HOA's finances and minimizing legal challenges.

4. **Contracts.** Agreements not reviewed by an attorney can have significant hidden liabilities.

5. **Ethics.** Whenever a director or committee member has a conflict of interest and refuses to recuse themselves, it is time to call legal counsel.

6. **Injuries.** Whether it be a slip and fall or another type of injury in the common area involving residents, guests, employees, vendors or otherwise, injuries should immediately be reported to insurance and to the HOA's attorney so conditions can be documented and steps taken to protect against further injury.

7. **Lawsuit Threatened.** In addition to putting the HOA's insurance carrier on notice of a potential claim, boards should talk to legal counsel about how best to respond to the threat to reduce the risk that a claim is actually filed, better position the HOA to defend itself in the event one is filed and take the matter into mediation if appropriate.

8. **Lawsuit Served.** Tendering a claim to the HOA's insurance carrier is the first order of business. Sending a copy

of the complaint to the attorney is the second. General counsel needs to know of the litigation so he can protect the HOA's interest in the event insurance is slow to respond or declines coverage. In addition, the board may need guidance on how to respond to the plaintiff on issues outside of the litigated matter.

9. **Personnel.** The most common high-risk areas are when an employee is hired, disciplined or fired. Employment litigation tends to be expensive so it is best to avoid it.

10. **Recall Petition.** Emotions run high in recall elections and issues of defamation often arise. Failure to properly handle a recall can lead to significant problems.

11. **Request for Reasonable Accommodation.** Failure to properly evaluate and respond to a request for disability accommodation can result in costly litigation.

12. **Rules & Regulations.** The HOA's rules and regulations rules should be reviewed to make sure proper fine and hearing procedures have been established and to ensure they are enforceable and not discriminatory, such as rules against children or restrictions on who may use pools, etc. If enforcement issues are more than routine because of the particular individuals involved or because the issues may be more complex than normal such as with architectural issues, then legal counsel should be consulted before matters deteriorate into litigation.

13. **Vendor Disputes.** Disputes between the HOA and its vendors can lead to litigation. Legal counsel needs to analyze appropriate contract provisions, evaluate the alleged breach and advise the board on how best to resolve the dispute.

*By Adams Kessler PLC* 🗑️

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## Paintenance

Paint maintenance is no different than roof, landscape, pool or asphalt maintenance. A good plan requires periodic inspections, timely and proper surface preparation and repair in addition to quality paint applied at recommended intervals by a knowledgeable professional. Here are some areas that should fit in a good paint maintenance plan:

**Surface Preparation** Properly prepared surfaces will resist the wood rot common to the cool, damp climates. If the wood fence, trim or siding gives easily to finger pressure, the wood is rotten beneath the existing paint and should be replaced prior to painting. When replacing rotted trim and siding, inspect for dryrot in the underlayment, studs or joists by probing with a screw driver. If the wood is soft, additional repairs will be necessary to stop the dryrot from spreading. DO NOT cover it up with new siding or paint. Dryrot is a wood cancer that grows best in dark, wet environments. Only use knowledgeable contractors that are experienced in dryrot repair and abatement.

**Chalking** If wiping your hand across a painted surface picks up white residue, the paint is chalking and it's time to repaint. If the chalky surface isn't removed with a power washer, a special primer can be added to the paint.

**Sprinkler Overspray** Keep sprinkler heads on the landscaping and off the buildings and fencing. Over spray causes a lot of paint damage including mildew, cracking, paint peeling and rust. Sprinkler heads get misdirected for a variety of reasons. Make sure your landscaper is made aware as soon as possible to correct the situation.

**Wrought-iron Fencing** Repainted ten years or whenever rust starts to appear.. If it is not maintained regularly you will end up replacing entire sections of fencing. Wrought iron rails typically last 30 years.

**Wood Fence Staining** The average restaining period for wood fencing is between five and seven years. As with any type of fencing, constant exposure to watering causes these areas to

deteriorate more rapidly than your eaves and trim.

### Wood Trim & Siding

Semi-transparent stains on wood siding will need to be recoated every two to three years. Solid color stains will last five years, and good 100 percent acrylic paint in these areas will last five to seven years.

**Stucco** If your stucco is not painted you will want to power wash it annually to eliminate the staining that occurs from roof runoff, mildew and pollutants. Power washing may not work for severely stained stucco and may require painting with a good 100 percent acrylic paint.

**Plan Ahead** The painting season is rapidly approaching. If you are planning to paint this year, get your paint bids now and book the job. When good weather hits, good painters are hard to find, less price competitive and may not be able to fit you into the schedule. ☀

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### Annual Meeting Excellence

There are a number of ways that a community association can improve the quality and success of its Annual Meeting. Much of it has to do with advance preparation. Begin the process at least three months prior to the event. Here are some of the critical areas to address:

**Confirm the Meeting Location.** Whether you are using association, public or private facilities, confirm availability at least 90 days in advance. If your group needs a large facility, up to six month advance may be needed. If your association does not have adequate room, consider using school, church or community facilities which are sometimes available free or at a nominal rate.

**Early Notification.** Annual Meeting notices and proxies should be sent out at least 30 days before the meeting

unless your bylaws call for some other time table. If you've had problems getting a quorum in the past, get the notice and proxies out at least 60 days before the meeting. Early notices permit additional reminders before the meeting and increases the odds of getting enough proxies to meet quorum requirements.

**Notices.** Include the meeting agenda, ballot measures, slate of candidates, proxies and other relevant information. A self addressed post paid envelope for the proxy is helpful. Include a phone number for questions.

**Clear Directions.** The notice should always include the address plus directions and perhaps a map if the meeting is held at an unfamiliar location.

**Nominating Committee.** Appoint a nominating committee at least 90 days prior to the meeting to begin identifying director candidates. While sending notices and newsletter announcements requesting candidates are helpful, usually it's the personal phone calls and visits that produce the candidates. A list of candidates along with a short bio and qualifications should accompany the meeting notice. Nominations are also accepted from the floor of the meeting.

**Excess Operating Funds Resolution.** IRS regulations require that the association as a whole approve rolling excess funds into the following year's operating revenue or reserves. This allows the association the option of filing as a Corporation (IRS Form 1120) or as a Homeowners' Association (IRS Form 1120H). 1120H has a lower tax rate for qualifying returns (see your accountant for the particulars). This resolution should be included in your meeting notice, proxy ballot, meeting ballots and voted upon at each Annual Meeting.

**Amendments to Bylaws.** If an amendment to the governing documents is proposed and included in the ballot, be sure a full explanation is provided with the notice. If multiple amendments are proposed, allow a vote on each rather than combining them (unless the amendments are integrally linked).

**Meeting Incentives.** Offering

**October 2022**



## THE REVIEWS SAY IT ALL

"This practical yet insight-book covers the myriad of topics that board members must juggle, providing concrete solutions that can be implemented immediately."

*Lori Rodgers - Bert Rodgers School*

"This book gives the property management industry an insight on what HOAs expect from us. It's a real estate management template for success."

*Nestor Correa - Netscore RSource Management*

"Trade HOA Stress For Success should be required reading for all HOA board members. I plan to make sure that a copy of it is distributed to all new members!"

*George Burns - Board President*

Trade HOA Stress for Success is available for purchase at [www.Amazon.com](http://www.Amazon.com) in hardcopy or Kindle versions.

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attendance incentives like refreshments (nonalcoholic), drawings for prizes, and food encourage participation.

**Sign-In Sheet.** Prepare a sign-in sheet alphabetized by last name that includes unit address, a check box named "Proxy" plus a signature line for members that attend the meeting. Check off names of proxies as received and put proxies in alphabetical order.

**Committees Sign-Up Sheet.** If someone is concerned enough to show up for the Annual Meeting, don't overlook the opportunity to get them to serve on the Landscape, Maintenance, Budget or some other committee. Have a sign-up sheet available for each committee.

**Ballot and Other Meeting Handouts.** At least one week before the meeting, prepare all meeting materials. The candidate ballot should include several blanks for write-ins or nominations from the floor. If there are a number of different items, it's a good idea to print each on a different color stock for ease of identification. Here's a list of forms and supplies:

Sign-in Sheet  
Signed Proxies and Extra Blank Proxies  
Annual Meeting Agendas  
Election Ballots  
Excess Operating Funds Resolutions & Ballots  
Amendments and Ballots  
Other Ballots  
Tally Sheet for Each Ballot  
Extra Pens  
Committee Sign-Up Sheets

**Day of the Meeting.** The Board of Directors and property manager should arrive at least 30 minutes prior to the meeting to get prepared and arrange furniture if necessary. Arrange sign-in sheets, completed proxies, agendas, ballots and other handouts at the entry door to catch members as they enter. Pre collating handouts will expedite the process.

**At Meeting Time.** Assuming quorum has been achieved, the President should call the meeting to order and proceed with the agenda as distributed.

**Board Participation.** Involve each board member: President runs the  
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meeting; Vice President discusses the Year in Review; Secretary reads the minutes of the last annual meeting; Treasurer gives a financial report and answers related questions; and Directors discuss committee activities.

The agenda usually follows a format similar to this:

- I. Call to Order
- II. Introduction of Board of Directors & Managing Agent
- III. Proof of Notice & Quorum (Secretary or Manager) Give date notice was mailed and proof that a quorum is present at the meeting
- IV. Reading & Approval Previous Annual Meeting Minutes (Secretary)
- V. Year in Review (Vice President). Review past board meeting agendas to develop a list of important issues.
- VI. Committee Reports (Committee Chairs)
- VII. Financial Report (Treasurer)
- VIII. Excess Operating Funds Resolution & Ballot (Treasurer)
- IX. Other Ballot Measures Each issue should be covered in detail and there should be a separate ballot for each item.
- X. Election of Officers
  - a. Accept nominations from the floor
  - b. Close nominations with a motion, second and a vote
  - c. Candidate statements (brief)
  - d. Appoint election inspectors or ballot counters
  - e. Take vote
  - f. Count ballots
  - g. Announce results

- XI. New Business May be started during ballot counting to save time. Time for member input and questions
- XII. Post Meeting Board Meeting A brief board meeting follows the annual meeting to determine the new officers, set future board meeting date[s], sign bank signature cards and other "can't wait" details. All members are entitled to attend.
- XIII. Adjournment Made by motion, second and a vote.

When an Annual Meeting is well organized, it generally will not run more than a couple of hours. Use these tips and your meeting will run like a well oiled machine. 🛠️

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## 6 Habits of Likable People

Likable people are charming. They're genuine. And they can make an entire room full of people smile. But when you meet someone, after "What do you do?", you're out of things to say because you're shy and a little insecure. But you want to make a good impression. You want people to genuinely like you. If I show you I'm genuinely happy to meet you, you'll instantly start to like me. And when you do, it will help calm my nerves and let me be myself.

Here's how likeable people do it: They lose the power pose. This is the one your parents may have taught you: To stand tall, square your shoulders, stride purposefully forward, drop your voice a couple of registers and shake hands with a firm grip. It's great to display nonverbal self-confidence, but go too far and it seems like you're trying to establish your importance. That makes it seem like it's more about you than it is the other person.

No matter how big a deal you are, you pale in comparison to South Africa's Nelson Mandela. Mandela steps forward with a smile and bends ever so slightly forward as if to bow. This is a clear sign of deference and respect. So, the next time you meet someone, relax, step forward, tilt your head towards them slightly, smile, and show that you're the one who is honored by the introduction, not them.

Touch can be very powerful. It can influence behavior, increase the chances of compliance, make the person doing the touching seem more attractive and friendly. Go easy. Pat the other person lightly on the upper arm or shoulder. Make it casual and nonthreatening. Mandela touches the forearm a second before he shakes hands. When combined with his posture and smile, it comes across as genuine and sincere. It is a key component in liking and being liked.



Likeable people are masters at Social Jiu-Jitsu (SJJ), the ancient art of getting you to talk about yourself without you ever knowing it happened. SJJ Masters are fascinated by things like how you transformed a tedious PowerPoint into a TED Talk-worthy presentation. SJJ Masters use their interest, politeness and social graces to cast a spell on you. And you like them for it.

Social Jiu-Jitsu is easy. Just ask the right questions. Stay open-ended and allow room for description and introspection. Ask how, why and who. As soon as you learn a little about someone, ask how they did it, why they did it, what they liked about it, what they learned from it or what you should do if you're in a similar situation.

No one gets too much recognition. Asking the right questions implicitly shows you respect another person's opinion and, by extension, the person. We all like people who respect us, if only because it shows they display great judgment (wink wink).

Everyone is better than you at something. Let them be better than you. Don't try to win the "getting to know someone" competition. Try to lose. Be complimentary. Be impressed. Admit a failing or a weakness. You don't have to disclose your darkest secrets. If the other person says, "I just closed a big deal" say, "That's great. How did you pull it off?" Likeable people focus on what they can do for you, not for themselves.

The standard conversation close is "Nice to meet you", nodding as you part. It's totally forgettable. Instead, shake hands again, use your free hand to gently touch the other person's forearm or shoulder. Say, "I am really glad I met you" or "I really enjoyed talking with you". Smile. Not the insincere salesperson smile that goes with, "Have a nice day!" but a genuine, appreciative smile. Making a great first impression is important, but so is making a great last impression.

All these techniques take practice. Accept that being a little more deferential, genuine, complimentary and vulnerable means putting yourself out there. Accept that at first it will feel risky. But don't worry. When you help people feel a little better about

themselves, which is reason enough, they'll like you for it. And you'll like yourself a little more, too.

By Jeff Haden ☼

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### The Haircut

One day, a florist went to a barber for a haircut. After the cut, he asked about his bill and the barber replied, "I can't accept money from you. I'm doing community service this week." The florist was pleased and left the shop.

When the barber went to open his shop the next morning, there was a Thank You card and a dozen roses waiting for him.

Later, a cop arrived for a haircut. When he tried to pay his bill, the barber again replied "I can't accept money from you. I'm doing community service this week." The cop was happy and left the shop.

The next morning when the barber went to open up, there was a Thank You card and a dozen donuts waiting for him.

Then a congressman came in for a haircut, and when he went to pay his bill, the barber again replied "I can't accept money from you. I'm doing community service this week." The congressman was very happy and left the shop.

The next morning, when the barber went to open up, there were a dozen congressmen lined up waiting for a free haircut.

Blessed are those that can give without remembering and take without forgetting. ☼

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### Dear IRS

I am responding to your letter denying the deduction for two of the three dependents I claimed on my Federal Income Tax return. Thank you. I have questioned whether these are my children or not for years. It's only fair that since they are minors and not my responsibility that the government knows something about them. You may apply next year to reassign them to me and reinstate the deduction. This year they are yours!

The oldest, Kristen, is now 17. She is brilliant. Ask her! I suggest you put her to work in your office where she can answer people's questions about their returns. While she has had no formal training, it has not seemed to hamper her knowledge of any other subject you can name. Taxes should be a breeze.

Patrick is 14. I've had my suspicions about this one. His eyes are a little too close together for normal people. He may be a tax examiner himself someday if you don't incarcerate him first. He and his friends have raging hormones. DO NOT leave any of them unsupervised with girls, explosives, inflammables, vehicles or cellphones.

Heather, my youngest, slid through a time warp or came from a bad acid trip in the 60s. She wears tie-dyed clothes, beads and sandals. She wears her hat backwards, pants baggy and wants one of her ears pierced four more times.

You denied two of the three deductions so I guess it's only fair you get to pick which two you will take. I prefer you take the two youngest, I still go bankrupt with Kristen's college expense but then I'm free! If you take the two oldest at least I have time for counseling before Heather becomes a teenager. If you take the two girls I won't feel so bad about putting Patrick in a military academy. Please let me know of your decision as soon as possible as I have already increased the withholding on my W4 to cover the additional tax and made a down payment on an airplane.

Yours Truly,

John Q. Smith ☼