



# The Regenesis Report



Seattle Edition Innovative Homeowner Association Management Strategies Priceless

**Regenesis** means making new beginnings using eternal principles in innovative ways.

**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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## HOA Peacemakers

Homeowner associations can be hotbeds of discontent, turmoil and conflict at times. Out in the big world, combatants can often successfully just avoid each other rather than deal with the problems. But within the HOA, avoidance is much more difficult and being in conflict with a neighbor can make living there very stressful. Unresolved conflicts in HOAs often prompt one or both to move to avoid further unpleasantry.

The Bible teaches that conflict comes from the desires that battle in the human heart: "What causes fights and quarrels among you? Don't they come from your desires that battle within you? You want something but don't get it. You kill and covet, but you cannot have what you want. You quarrel and fight. You do not have, because you do not ask God. When you ask, you do not receive, because you ask with wrong motives, that you may spend what you get on your pleasures." James 4:1-3

Conflict caused by concealing the truth, bending others to your will, or seeking revenge is clearly counter productive. But conflict can also be fueled by good intentions in a desire to be understood, loved, respected, or vindicated.

Conflict can arouse different kinds of responses. One response is to run, hide or deny the problem exists. Another response is to attack either verbally, physically or legally. Neither of these responses diminishes the conflict and usually has quite the opposite effect. The only real long term solutions to conflict are peacemaking responses like:

**1. Overlook the Conflict.** Just because we get slapped doesn't mean we have to get even. An eye for an eye and a tooth for a tooth leaves only the blind and toothless. "A man's wisdom gives him patience; it is to his glory to overlook an offense." Proverbs 19:11 "Bear with each other and forgive whatever grievances you may have against one another." Colossians 3:13

**2. Reconciliation.** Making amends is not only the right thing to do, it relieves us of anxiety and hostility. "Therefore, if you are offering your gift at the altar and there remember that your brother has something against you, leave your gift there in front of the altar. First go and be reconciled to your brother; then come and offer your gift. Matthew 5:23-24

**3. Mediation.** Pride is a high mountain to climb. Sometimes, a little help from a friend is needed to build a bridge of reconciliation. "If your brother sins against you, go and show him his fault, just between the two of you. If he listens to you, you have won your brother over. But if he will not listen, take one or two others along, so that every matter may be established by the testimony of two or three witnesses." Matthew 18:15-17

**4. Accountability.** Rather than stand idly by while a neighbor engages in self destructive or harmful behavior, intercede in a caring way. "Brothers, if someone is caught in a sin, you who are spiritual should restore him gently." Galatians 6: 1

Peacemakers do not avoid conflict but confront it directly with the goal of reconciliation. Reconciliation is not always easy to achieve because the human heart can be hard. But blessed are the peacemakers who point the way in an HOA.☀

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## Ask the HOA Expert

**Q** Can a homeowners association force unit owners to use its contractor to repair unit interior damage when the HOA is responsible for repairs? In this case, water seeped in due to failed waterproofing and damaged carpet, drywall, paint, baseboards and insulation. The HOA is paying a contractor to do both exterior and interior repairs but I do not want to use this contractor. I'll accept the HOA's cost estimate to do my interior repairs but want to get my own contractor.

**A** The reason the HOA wants one contractor is it's easier, faster and cheaper to use one contractor for all repairs. But unless interior repairs involve things like structural repairs (safety issue) or mold remediation (health issue) which can adversely impact neighboring units, individual unit owners have the right to take care of interior repairs using their own contractor.

**Q** The board has begun to charge 12% interest on past due balances. This is in conflict to the governing documents which state 8% per annum.

**A** The board cannot institute an interest rate that contradicts the governing documents. Only an appropriate vote of the members (as defined by the governing documents) can change or eliminate the stated percentage.

**Q** Why is an HOA or its management company allowed to charge for resale disclosure packages?

**A** Both are entitled to a reasonable charge for producing information related to HOA sales. This should not be a profit center for a self managed HOA although it is usually a profit center for an HOA management company. The board needs to make sure that charges are commensurate with the actual work required and not allow the management company to set any price it wants, especially if it could hamper sales.

That said, some states have more complex resale disclosure requirements than others so time requirements to fulfill them varies from state to state. In

recent years, more lenders have enacted more stringent underwriting requirements which included verifications of HOA reserve studies, renter occupancy, delinquency rates and insurance. This has placed additional burdens on boards and managers to comply with resale disclosure.

**Q** We bought a lot in an HOA and were given a copy of the recorded governing documents prior to closing. We read them carefully before we closed the sale. Several months later, we submitted house plans to the Architectural Review Committee (ARC) for approval and were informed that we could not build any structure within 30 feet of the back of our property line. This restriction was outlined in the ARC's "Landscape Guidelines", something we were not provided a copy of before closing. As it turns out, the standard rear setback is 15 feet but a 30 foot restriction applies to a few lots (including ours) to maintain a "view corridor". Can the HOA really enforce this kind of selective setback restriction on us?

**A** You apparently were aware that there were HOA architectural restrictions since you knew to submit plans to the ARC for approval. Did you not think to inquire about what those restrictions might be before closing? On the other hand, the seller most certainly knew about the special setback on this lot. If it was not disclosed, you have an issue with the seller. Finally, any setback or other restriction that applies to selected lots should be made part of those lots' title record so prospective purchases can be made aware of it prior to closing.

You likely have a strong case in your favor to get the restriction overturned. However, you may be fighting your neighbors who will get their view blocked as well as the HOA to get it done. You may need to hire an attorney that specializes in HOA law to help you sort it out.

**Q** I purchased a house in an HOA several years ago. The next year, the members voted to set a limit on rentals. I am serving in the Air Force and was recently deployed overseas for 1-2 years. I contacted the HOA board to request permission to rent my house until I return. The rental policy provides for exceptions due to hardship. Yet the

board informed me that there were too many rentals already and that my request was denied. What can I do?

**A** Hardship provisions are meant to be exceptions to the rule so the fact that there are "too many rentals" is immaterial. Your situation is ideally suited for the hardship provision since your deployment is temporary and not of your choosing.

**Q** We are a self-managed HOA. Over the years, the board has only distributed minutes of the annual meetings. Should we be sending minutes of board meetings and if so, should we wait until they have been approved?

**A** You should distribute minutes clearly marked DRAFT within one week after each meeting along with the caveat that they are subject to additions and corrections at the next meeting. This makes sense because there may be action items that will take place before the next meeting and members need to be informed before the fact, not after. Email the minutes to eliminate distribution cost and to improved efficiency. 📧

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## Recruiting Directors

From time to time, it is necessary or desirable to recruit new directors. It may be due to a vacancy or an upcoming election. Often volunteers are reluctant

to commit until they fully understand the scope of the job and time commitment. Here is a sample solicitation letter that outlines director duties:

To All Members of Nottacare Condominium,

At the Annual Meeting, two positions for director of the board will be voted on. Anyone that is a owner in good standing (current in HOA payments and no outstanding violations) is eligible to run in this election.

**Overview of Director Duties.** The board has the authority to direct business including maintenance and financial oversight, rules enforcement and architectural design approval. The board has the authority to hire and oversee the professional management company.

The board meets four times a year for two hours to review business and to make decisions and enact policy. Between those meetings, there may be an occasion special meeting to deal with an urgent matter that can't wait for a regularly scheduled board meeting. The President has the authority to act on behalf of the board between meetings as long as the matter is authorized by the governing documents or in line with the approved budget.

Serving on the board gives you direct impact and influence on how HOA business is handled. While a management, financial or construction background is helpful, no special training is required other than the willingness and availability to serve. The office of director carries a term of three years.

All members have an obligation to serve in some capacity. We hope you will consider running for the board. You may be nominated by another owner or by yourself. If you are interested in being nominated, please email that desire and your contact information to [info@nottacare.org](mailto:info@nottacare.org) by no later than (date). Please contact me if you have any questions.

*I.M. Daboss* [daboss@nottacare.org](mailto:daboss@nottacare.org)  
President - Nottacare Condominium

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## HOA Meeting Basics

HOA board meetings are designed to transact essential business. They should be carefully choreographed to that end rather than a rambling discussion. Members should be welcome and encouraged to attend and observe. To that end, provide a Member Forum at the beginning of the meeting for owner comments, questions and complaints (It's the American way).

Here are the meeting basics:

**Motions & Voting.** Business matters are considered when a motion is made, and seconded. Each motion should offer the opportunity for discussion prior to a vote. Votes, when taken, involve board members only.

**Meeting Agenda.** There may be an agenda format prescribed in your governing documents. If so, use it. If not, use an agenda like:

**Call to Order** - President says, "The meeting is called to order."

**Minutes** - Secretary reads the Minutes of the last meeting. A motion to approve the minutes as read or amended should be passed.

**Review Financial Report.** Most recent month Balance Sheet, Income & Expense Report and collection activity.

**Officer's Reports** - President, Treasurer, etc.

**Committee Reports** - First come reports from "standing" or permanent committees; then from "ad hoc," or special committees.

**Unfinished Business** - Business left over from previous meetings.

**New Business** - Introduction of new topics. If the topic is complex and requires research, it should be assigned to a committee who will report recommendations to the board at a future meeting.

**Adjournment** - The meeting ends by a vote or by general consent.

**Timed Agenda.** To keep meetings on track, using a timed agenda is helpful. Two hours or less should be the goal of most meetings since concentration and productivity begins to fade. So, when composing the agenda, put actual time limits on each item, like Owner Forum (15 minutes), Minutes (5 minutes), Treasurer's Report (10 minutes) and so on. Timing will help move business along and remind all present that time is a valuable commodity.

**Action Agenda.** Meetings should be action driven. To that end, all agenda items should be framed with a "review and approve" context to them. While discussion may be part of the plan, it is not the goal. Every item brought up at the meeting should have a motion and second. So, if a director states, "I'd like to talk about a parking policy on commercial vehicles", the president's response should be, "Do I hear a motion and second to establish a commercial vehicle parking policy?" If both aren't forthcoming, time to move on to other business. Impromptu motions should usually be handled at a future meeting if they require research and study. The president should ask the proposer to present a proposal at the next meeting for the board's consideration.

All members have the responsibility to serve the HOA in some way, whether it be on the board or committee. If you've recently been elected, congratulations! Welcome to the board and thanks for stepping up!

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**Sample Rules**

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## Earmarking Reserves

Most homeowner associations are entrusted with substantial common elements which must be maintained, replaced or renewed. All of this costs a

lot of money. Borrowing said money is a very bad idea because it comes at a very high price in the way of interest and fees which must be repaid along with the principal. The cheapest and fairest way to pay for these expenses is to earmark a portion of the monthly, quarterly or annual fees and hold this money in reserve for future expenses. A properly done reserve study will inform the board how much the earmark should be so that all pay a fair share of a 30 year plan. If this is done, special assessments are never needed and the board has the money when needed.

But keep in mind that even the best reserve study has its limitations. While it predicts likely useful life spans and replacement costs, it can't guarantee either one. A reserve study is based on assumptions that change over time. The climate, weather, soil conditions, maintenance, design and construction quality play a role in the aging process, causing some components to age differently than expected. The financial climate is also variable. Investment earnings and the inflation change. To keep the reserve study accurate, industry experts recommend (and state statutes often require) that the reserve study be updated annually.

**How Much Do You Need?** The reserve study will estimate how much money is needed for future projects and when the funds will be needed. For the typical garden style condominium, it is necessary to reserve 25-35% of the annual budget to meet future needs.

**Communicate with Owners.** For HOAs that are not currently contributing enough to reserves, the solution is to start contributing more by increasing the monthly fees. Lenders shy away from HOAs which have little or no reserves but it negatively impacts a lender's collateral. Once the reserve study is completed, provide owners with a copy and encourage them to read it. Hold a special meeting and invite the reserve study provider to explain it. Make sure owners understand the reserve funding schedule and emphasize the relationship between the reserve level and property values. It is not just lenders that will be scrutinizing the HOA's finances. Savvy buyers will be scrutinizing them as well.

**Don't Commingle Funds.** Reserves should not be used to pay for ongoing preventive maintenance and repairs. Those should be paid out of the operating budget. Reserve funds should be segregated in a special bank account apart from operating funds. Typically, the portion of HOA fees earmarked for reserves is swept into this separate account monthly. Only reserve related expenses should be paid for out of this special account.

**Borrow Reserves Funds Carefully.** Borrow from reserves only in an emergency or because of seasonal high expenses like an insurance premium that comes due early in the year and not enough fees have accumulated yet to pay it. If you must borrow, document the board vote approving that decision, establish a reasonable repayment plan and stick to the plan.

**Develop a Reserve Investment Plan.** Reserve funds are typically placed in FDIC insured savings accounts, money market accounts and Certificates of Deposit. Most state laws don't have specific reserve investment standards for homeowner associations. The governing documents usually

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give the board investment discretion. Boards should develop a written investment policy that defines the investment goals, establishes the objectives against which the investment performance will be measured, and identifies the boundaries within which investment selections will be made.

The investment policy should include:

- Keep the reserves safe (don't risk the principal).
- Preserve earning power by choosing investments that match or exceed the inflation rate when possible.
- Ensure that the funds are available when they are needed.

Other issues to consider include:

- Consider working with an investment professional. This is particularly important when the reserve fund is large.
- Remember that this is OPM (Other Peoples' Money). Tread carefully.
- Document the investment decisions in meeting minutes.
- Diversify the investments (savings, CDs, etc.)
- Focus on liquidity. Industry experts recommend holding 5% of reserves in cash for emergencies, another 10-15% in short term (six months or less) securities and the rest spread among varied investments with varied maturities. The reserve study provides the schedule for work and projected cost for investment planning.
- Review your investment strategies annually to make sure they still match near and long term goals. Don't let cyclical changes in the market alter the investment strategy which should remain long term.

Maintaining adequate reserves is a fundamental part of the board's fiduciary duty. Make sure to earmark the budget for reserves. 🌱

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## Protecting the Landscape

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

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

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

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

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## Moth to a Flame

Moths give off “pheromones”, a scent that attracts mates from many miles away. Oh, that it were so easy to attract volunteers at a homeowner association. Just spritz a bit of Eau de Volunteer about and stand back! So what does it really take to attract good volunteers? Here are a couple of suggestions:

**Communicate.** A frequent complaint of members is not being kept informed. To draw out volunteers, it's critical that they know what's going on. Also, some members develop a suspicious nature about board motives when kept in the dark. Suspicion breeds volunteer resistance. The board should strive to do business transparently. Let them know what you're up to early and often! A newsletter and flyer distribution box (the kind used by real estate agents) is an inexpensive and convenient way to get the word out. Email is free.

**Give credit where credit is due.** People love recognition. Make sure that directors, committee members and volunteers are given formal recognition for their efforts at meetings, in the minutes and newsletters...every opportunity where there is an audience. Seek out particular members that show superior abilities. Award certificates of achievement at the annual meeting.

**Provide social opportunities.** People tend to want to help those that they

know personally. However, many are shy and don't make friends easily. The HOA can promote several social events each year to facilitate the process. Consider a spring clean-up party, pool party or just plain old potluck. It will help create real "community".

**Assign real jobs to do.** It's been said, "A committee takes minutes and wastes hours." There is nothing more frustrating than a job with no substance. There is real work to do at each homeowner association. Directors and committee members should have clear marching orders detailing exactly what the objectives are, the time frame and the money available to help get the task done.

**Get organized.** Have meetings scheduled well in advance. Have a proper agenda, run the meeting in a businesslike way and limit your meetings to two hours. Save cocktails, if any, until after the meeting to avoid endless rambling meetings which are a real turnoff to successful people (the kind you want as volunteers). Your meetings should be decision oriented so things get done.

**Be an encourager.** It is incumbent on the board to take the lead in promoting volunteers. The successful leader motivates by persuasion and not authority. A servant leader does not lower himself but elevates others.

Since common scents don't work with humans like they do in the animal world, use common sense by making the volunteer position too attractive to resist....like a moth to a flame. 🌱

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## HOA Renter Rights

One of the issues that many HOAs grapple with is renters. Some ban them outright, others limit their number. Most live and let live. Interestingly, the HOA has no direct legal authority over renters, only its members. This disconnect creates some practical problems for the board or manager in communicating with tenants since there

is always a middle person to deal with. So how does this all play out?

**Rules Enforcement.** The HOA has the right to expect all residents, whether owner or renter, to play by the rules. But with renters, it's up to the landlord to enforce them, not the HOA. So, the board should adopt a policy that requires all landlords to provide a set of the governing documents and all rules that have been adopted that affect the renter. The Board can also require that all rental agreements specifically make reference to and be subject to those documents. If a tenant violates a rule, the landlord should be informed of it immediately along with the expectation of enforcement. If there is a fine or penalty, the landlord should be levied for it as if he did the dirty deed himself. It's up to the landlord to get reimbursement from the tenant.

There are several exceptions to the landlord middle man enforcement process. If a tenant parks illegally in a fire lane, the HOA has the authority to have the car towed and the tenant will, naturally, pay to retrieve the car. There are some things the HOA should not interfere or get involved with. When a renter crosses the line between HOA rule and civil law infraction, the HOA has the right to call in proper authorities. Those authorities include the police, fire safety, FBI and drug enforcement.

**Short vs. Long Term Rentals.** Most HOAs deal with renters who have entered into long term rental agreements (30 days or more). Most governing documents, in fact, require that the rental agreement be long term to avoid what would be a hotel operation. In resort areas, (mountains, beach, etc.) the HOA may have been expressly built and sold allowing owners to rent their homes short term. (These homes or units are owned outright and are not timeshares with professional site management.) However, unless virtually every owner has that in mind, there will be an ongoing clash between permanent residents and short term renters. Short termers have no allegiance to the community, don't know the neighbors and frequently are in party mode.

These factors point to ongoing problems with the locals. If this is a reality, it's important for the board to press for consensus among the owners.

If the majority want the flexibility to short term rent, it makes sense to have an onsite manager to control these issues and others like key exchange and housekeeping. The manager could be funded partly by the HOA to handle regular maintenance and partly by landlords to care for rentals.

**Controlling Tenants.** Renters generally are no better or worse than owner residents. Ongoing problems result from lack of landlord standards (or enforcement of those standards) by the HOA. Here are Landlord Standards which all HOAs should adopt:

- Landlords must provide a set of governing documents (CC&Rs) and rules to renters before move in.
- HOA rules & regulations must be a condition of all rental agreements.
- Landlords are held accountable for renter infractions.
- Renters must communicate requests to the HOA through the landlord.
- Board may demand termination of a tenant with multiple rule violations.
- Landlord must provide a copy of each rental agreement to ensure compliance with the HOA's standards and for emergency contact purposes.

**Renter Surcharges & Fees.** Some HOAs impose a Move In/Move Out or Renter Fee on landlords. Unless this fee is imposed on all residents, owner or renter, it is discriminatory. If a particular renter causes damage to the common area moving in or out, the landlord should be charged for it. Never surcharge classes of residents.

**Communicating with Landlords.** All tenant violations should be directed to the landlord in writing along with specifics, including date and time. The communication should be clear on what the landlord's course of action should be. It should also reinforce that it's up to the landlord, not the HOA, to deal with a renter.

**Limiting Rentals.** At one time or another, someone may press to limit rentals. There are right reasons for doing so, but avoid the wrong one: The belief that renters are undesirable. While some tenants may be problems, so are some owners. Each must be dealt with as individuals, not a class. The only valid reason for limiting rentals is to protect financing and market values. Many lenders view HOAs with a high number of rentals as investment

property. Investor loans are more expensive and in a tight market, loans may be hard to get. Since availability of cheap money drives market values, it's important to avoid lender restrictions. Although there is no hard and fast guideline, maintaining at least two-thirds owner occupancy seems to pass muster with most lenders. Falling below that level causes closer scrutiny by some lenders. When lenders scrutinize, it usually means the interest rate or fees go up. Restricted financing options cause market values to fall.

Limiting rentals to protect financing is a worthy rationale for doing so. However, placing a system in place that allows some owners to rent but not others has many problems. The board must oversee the rental restriction policy and establish guidelines for who gets to rent and when. Also, there will be hardship cases (disability, job loss, down real estate market, etc.) that will press the board to bend the policy.

And consider if a landlord simply ignores the restriction and rents his unit. The HOA has control over the owner but not tenants who are protected by Landlord-Tenant laws. For a variety of reasons, if limiting rentals is desirable, it should apply to all owners. A total ban on rentals doesn't completely eliminate the board's oversight, but it at least makes it fair to all owners. (For a sample Rental Restriction Policy, see [www.Regensis.net](http://www.Regensis.net).)

**Renters Have Rights.** After considering the various issues, it's important to remember that renters have rights that must be respected. Besides the state Landlord-Tenant laws, the Fair Housing Act speaks to unreasonable rental restrictions. Never impose restrictions based on sex, faith, culture or race. When it comes to HOA renters, do the right thing. 🗳️

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