



# 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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## Elect the Select

Homeowner associations are designed to be representative democracies governed by a board of directors elected by the members. Electing directors to the board that can thoughtfully govern is extremely important. To accomplish this, elections must be carefully planned, not hatched at the last minute. Here are important components of a successful election process:

**Find Worthy Candidates.** When seeking nominations, a job description should be prepared so potential candidates know what is expected of them. Some refuse to run because they fear the unknown or an open-ended commitment. The director job and term of office can easily be summarized in a paragraph as can the descriptions of officer jobs (president, treasurer and secretary). Take the time to make sure all potential candidates understand and commit to fulfilling the job description by informing them of expectations in advance.

Candidates are identified a number of ways:

**1. By a Nominating Committee.** The board can appoint a Nominating Committee which can identify, interview and recommend certain individuals for election. While the Nominating Committee's recommendations are worth of considering, any member in good standing is still entitled to run for office even if not recommended by the Committee.

**2. Nominated by Self or Others.** Any member may nominate themselves or be nominated by another member. It's best to do this as soon as the nomination process begins, far in advance of the annual meeting, so the name and credentials can be known to all members. Since it is common for some members not to attend the meeting and to provide a proxy to someone that does, if a candidate is not known in advance, those not attending the meeting will not have the ability to support that candidate.

**3. Nominated at the Annual Meeting.** Nominations are usually accepted from the floor at the annual meeting. Unfortunately, this option fails to inform members who

have not attended the meeting, It is often difficult to get elected when nominated from the floor unless there are not enough candidates to fill vacancies.

**4. Write-in Candidate.** Writing someone's name on a ballot does not ensure that person is actually qualified for the job or interested in running unless the person was nominated from the floor.

**Candidate Qualifications.** Candidates should present their qualifications and platforms to the members in writing. This can be done door to door, by email, by letter, in the HOA newsletter, by the HOA website and at the annual meeting where the candidates can also answer questions posed by owners. Since some members may not be able to attend the meeting, circulating candidate qualifications before the meeting is very important.

It is in the HOA's best interest to identify candidates who have experience that will benefit the HOA such as:

- Having an organized president is essential. Seek those that are comfortable in that role.
- Having a treasurer who regularly works with financial matters like a bookkeeper or CPA.
- Having a secretary who understands or can learn to art of minute taking.
- Having directors that are available and committed to attend all board meetings. This requirement cannot be understated. If board meetings fail to achieve a quorum or directors, official business cannot be done.

**Conducting an Election.** This is a relatively straight forward process. Remind the voters that all candidates are running for *director* positions, not offices (president, treasurer or secretary). Officer positions are decided by the board itself and subject to board majority vote. While certain candidates may be running for election and hoping for a certain office, it doesn't always turn out that way if there are two or more directors vying for the same office.

If the HOA has many voting members, elections should be conducted early in the meeting so the results can be tabulated and announced during the meeting. Election inspectors should be appointed to count the ballots and certify that the results are accurate. Inspectors should have no interest in the election outcome. Winners should be announced during the Annual Meeting with terms to start immediately following the meeting.

**Voting in Person or by Proxy.** Ideally, each member should attend the annual meeting in person to cast a ballot. However, for a variety of reasons, some may choose to assign their voting rights to a "proxy". A proxy is the written authorization that allows one person to appoint another (the proxy holder) to vote on his behalf. A proxy holder can usually be any one of legal age and is not required to be an HOA member. So proxies can be given to relatives, friends, attorneys and others.

State law and the HOA's governing documents may specify whether proxy voting may be used and may address the type of proxy (general or directed) and content of the proxy. A **general proxy** allows the proxy holder to make the decision on behalf of the proxy giver while a **directed proxy** requires the proxy holder to carry out the proxy giver's specific directions. A sample proxy is available to Gold Subscribers at [www.Regensis.net](http://www.Regensis.net)

Good board members act to protect the interests of all members. Handle the candidate selection process carefully by seeking out the best candidates available. When it comes to board elections, rather than expect a train wreck, elect the select! 🗳️

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### Ask the HOA Expert™

**Q** Can a board member also serve on a committee or should they just act as a liaison between the committee and the board? One of our committees does not want board members to attend their meetings.

**A** Yes, board members can serve on committees and often do. Committee meetings typically are not open to non-committee members. This committee may be up to something it shouldn't be. Committees should have clear marching orders. If a committee goes "rogue", the board can terminate it since it exists at the pleasure of the board.

**Q** We are going to have our annual meeting soon. There are two positions for the board coming up for election. We have two people that want to run but one is not eligible because of an outstanding HOA fee balance. He says he's going to clear it up by election time. Should we consider him a candidate?

**A** Assuming the governing documents define "eligibility" they way you describe it, no one can be a candidate for the board unless they are current with money owed to the HOA. So, you only have one eligible candidate at this

point. If the delinquent member who wants to be a candidate makes good on his promise to pay, he can nominate himself at the annual meeting.

**Q** At a recent election, an owner was elected that volunteered to act as President and property manager for no pay. She submitted reimbursement requests for office supplies and mileage related to HOA business. But recently, she asked the board to waive her HOA fees because she is performing the role of property manager. It seems to be a conflict of interest.

**A** Most HOA governing documents prohibit board members from receiving compensation. While reimbursements are appropriate, waiving her HOA fees is not. It is just another way of receiving compensation and a clear conflict of interest. If she wants to be paid for her work, she should resign from the board.

**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 uncommon for the governing documents to require a vote of the members to authorize a special assessment but not to approve the annual budget. 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 in a monthly way (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.

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](http://www.apra-usa.com) carrying the Professional Reserve Analyst (PRA) credential demonstrate the experience and proficiency to provide what you need. 🏠



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

## Earthquake Primer

What does a deductible for earthquake (EQ) insurance really mean? While 5% deductibles are available, some insurance carriers offer earthquake deductibles of 15% to lower the premium, which also substantially reduces the company's exposure to claims. What the HOA board needs to understand is that the HOA is paying for this additional insurance exposure.

For example: XYZ HOA has \$20,000,000 in building coverage for 60 units. To calculate the EQ deductible, multiply the building coverage by the deductible percentage.

**5% EQ Deductible:** \$20,000,000 x 5% = \$1,000,000; Average per unit\*: \$1,000,000/60 units = \$16,667

**15% EQ Deductible:** \$20,000,000 x 15% = \$3,000,000; Average per unit\*: \$3,000,000/60 units = \$50,000

\* Average per unit: Some condominiums allocate deductibles according a square footage or percentage formula, not equally.

Clearly, there is a huge difference in the deductible amount the HOA will be responsible for. There are other issues related to a higher deductible:

1. Does each owner have coverage for the earthquake deductible? In many cases, unit owners don't carry this kind of insurance.
2. While the board may be able to special assess unit owners for their portion of the deductible, if some are unable to pay the special assessment and the HOA is not be able to get a loan to cover the deductible, how will the repair work get done?

In most cases, it's cheaper for unit owners to take advantage of the HOA's 5% deductible versus increasing their individual earthquake coverage. A lower deductible will provide more peace of mind knowing that the insurance carrier is on the hook for the earthquake damage over 5% rather than having to collect the shortfall from owners.

Some speculate about when the next "Big One" will happen. But small earthquakes happen more often. If a small earthquake does a small amount of damage, it is more likely that the damage will be less than a 15% deductible, particularly with newer construction that have better seismic design than older construction.

The insurance market is changing when it comes to earthquake insurance deductibles and coverage. Homeowner association boards need to be aware and review the policy details at the next renewal with the insurance agent. Is it

in the best interest to raise the deductible? While saving a few thousand dollars in premium would be nice, how will the HOA fund a claim deductible that amounts to millions?

By Sara Eanni CIRMS – American Benefits Insurance 🏠

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## Unenforceable Rules

What happens if an HOA doesn't have an enforcement procedure for addressing rule violations like: 1<sup>st</sup> notice, 2<sup>nd</sup> notice, fine? If the HOA does not have enforcement procedures, the rules are theoretical and subject to endless debate. This raises several important issues relating to rules and their enforcement:

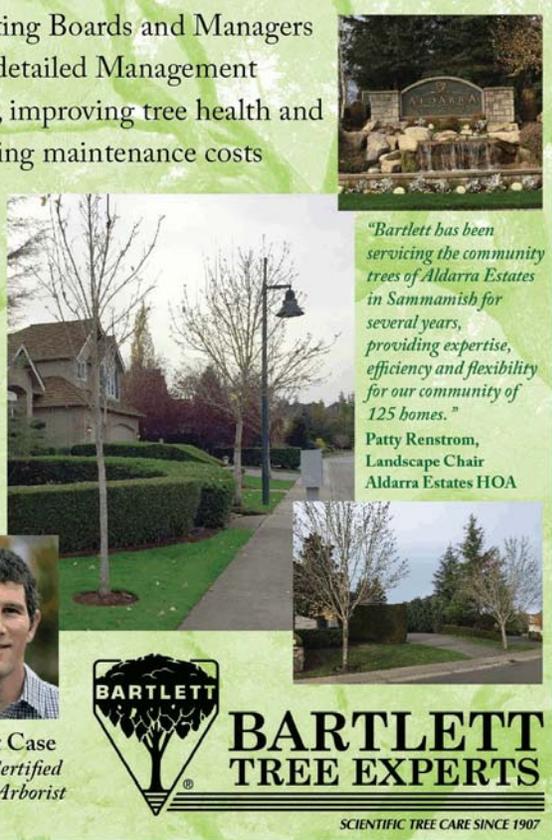
1. Not all rules are created equal. The three major categories of rules involve people, pets and parking. Each one of these categories can address or involve a safety issue. Safety ranks higher in the hierarchy of rule enforcement than, say, curb appeal issues. For example, people that smoke can create a second hand smoke health hazard for their neighbors. Physically aggressive dogs can attack people. Cars parked in the HOA's fire lane can block emergency response vehicles like fire trucks and ambulances. If the rule issue involves personal safety, it behooves the board to take enforcement more seriously.

2. Why have rules without consequences? Rules without consequences beg violation. If something is worthy of a rule, there must be an effective penalty for violation. Penalties should be reasonable and fit the crime. In the case of second hand smoke, the penalty may be a ban on the smoking in the common area. In the case of the aggressive dog, either the owner keeps it securely under control while in the common area or remove it permanently from the HOA. In the case of a fire lane violation, immediate towing is the best and most expedient enforcement.

3. Should unenforced rules be purged? Rules with no consequences should be

un-ruled. Reasonable people need few rules. Unreasonable people will not respect rules that restrict something they want to do. So enact only the few needed rules that aren't already codified by the local government. And make sure they have effective penalties for the scofflaws. 🌳

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## HOA Transfer Fees

Transfer fees have become a reality in some HOAs. Buyers are required to pay the transfer fee, in some cases, thousands of dollars, to close the transaction. Does the board have the authority to impose transfer fees? It all depends.

Transfer fees can be charged if there is actual cost incurred by the HOA in handling paperwork and physical move-in or move-out tasks. For example, when moving in or out of a high rise condominium, special parking might be needed for the moving truck as well as reserving an elevator with special wall padding installed. Additional janitorial is often needed to clean up after the movers. The entry access system often needs to be reprogrammed as well as parking garage openers. In this kind of scenario, the HOA is incurring real costs and is entitled to recoup reasonable costs to facilitate the move.

However, sometimes the transfer fee has no basis in cost but is used as a way to extort money from new owners who have no choice but pay it, kind of like a hotel tax for tourists. The justification is often that the transfer fee will be added to reserve funds. The problem is, new owners do not owe money to reserves since they have not yet enjoyed the benefit of the common elements. Any deficit in reserves is owed by current and past owners not by new owners.

While the board does have the authority to enact reasonable fines for failure to abide by the rules or pay dues as agreed, it does not have authority to impose special fees on new owners over and above what it really takes to execute the task (change the lock, the records, etc.). Anything more is considered a special assessment on a select group of owners. The board has no authority to special assess certain owners merely because they are new (or landlords, another common target for special fees or treatment). A transfer fee creates a barrier to entry if a buyer doesn't want to pay or can't afford it.

That said, if the members vote to approve a fee which all members pay including the owners already in residence, it would probably pass muster. 🌳

## 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 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 membership 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 or 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 rules and 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 is not required.

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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## Fair Housing in HOAs

It's a bright spring morning and the real estate market is beginning to defrost from its long winter chill. Spring buyers are out including Polly Purchaser who is looking to move her family to your homeowner association. While looking around, Polly asks a board member what the community is like. The board member responds, "It is a great neighborhood, very quiet. Not too many kids though."

Polly moves on and looks at the HOA next door. While speaking to the board president, he states that the community is a great area and very quiet because owners are encouraged not to sell to families with kids.

While the comments from the first board member are fine, the comments by the second expose that HOA to claims of discrimination. The federal Fair Housing Act establishes a number of protected classes that a homeowner association may not discriminate against including familial status, race, age, sex, religion, national origin and disability. Even if an HOA does not have a formal policy to discriminate, it may be subject to a discrimination claim based upon comments of the board, a committee or members with apparent authority to govern the HOA.

If a board expresses a preference for owners to sell to families without children, that board has discriminated even though there was no formal discrimination policy.

The Fair Housing Act not only applies to the formal actions of the board, but also to the informal actions. Any actions that have a discriminatory affect on a protected class could result in liability exposure. In the examples, each board member was merely describing the neighborhood; however, one board described a policy to discourage sales to families with children.

In one case, an HOA was required to pay \$112,500 to a victim of familial

discrimination and an additional fine of \$15,000 (United States v. Latvian Tower Condominium Association, Inc.) as a civil penalty for the systematic efforts to prevent sales to families with children. So you see, discrimination claims are not taken lightly and can result in severe penalties.

In conclusion, a homeowner association must treat all owners and prospective owners the same in both written policies as well as in board actions. Treating a member of a protected class differently than others could result in a heavy price to pay.

by David A. Firmin, Esq. 🌱

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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

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 Barkbusters 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 girl! 🐾

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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 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

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maintain and are subject to dryrot in wet climates.

There is a great alternative which is attractive, lower 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 ventilation and 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 repainting. Also, painted wood fences trap moisture which deteriorates the wood. Good Neighbor Fence of cedar or redwood will last up to 25 years when properly built and left unpainted. Clear sealer can be applied to help retain the wood color but this does not 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.

For construction specifications, see [www.Regenesi.s.net](http://www.Regenesi.s.net) 🐾

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### Sweetness of Friendship

Your friend is your needs answered. He is your field which you sow with love and reap with thanksgiving. And he is your board and your fireside. For you come to him with your hunger, and you seek him for peace.

When your friend speaks his mind you fear not the 'nay' in your own mind, nor do you withhold the 'aye.' And when he is silent your heart ceases not to listen to his heart; For without words, in friendship, all thoughts, all

desires, all expectations are born and shared, with joy that is unacclaimed.

When you part from your friend, you grieve not; For that which you love most in him may be clearer in his absence, as the mountain to the climber is clearer from the plain.

And let there be no purpose in friendship save the deepening of the spirit. For love that seeks aught but the disclosure of its own mystery is not love but a net cast forth: and only the unprofitable is caught.

And let your best be for your friend. If he must know the ebb of your tide, let him know its flood also. For what is your friend that you should seek him with hours to kill? Seek him always with hours to live. For it is his to fill your need, but not your emptiness.

And in the sweetness of friendship let there be laughter, and sharing of pleasures. For in the dew of little things the heart finds its morning and is refreshed.

*The Prophet by Khalil Gibran* 🐾

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The mechanics are German,  
The lovers are French and  
It's all organized by the Swiss.

Hell is where:  
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The chefs are British,  
The mechanics are French,  
The lovers are Swiss and  
It's all organized by the Italians. 🐾

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