



# 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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## The Shakedown

There's a gangster in the 'hood. He's rough, he's tough and he's gonna show the board who's boss. He's holding his monthly assessment hostage to extort action from the HOA. It could be something he wants fixed or some rule he wants changed but no change is going to come until he gets his way.

This kind of shakedown is fairly common in homeowner associations. It usually comes up when an owner's requests for maintenance have been ignored. Sometimes it's because of how the board is doing business: secret meetings, abuse of power, poor or unequal rule enforcement. So there is a demand for change which often includes an element of righteous indignation: "I'm not gonna TAKE it anymore!"

Sometimes the excuse for the shakedown is legitimate. Repeated maintenance requests have gone ignored. The roof has been leaking for weeks and damage is being done to their personal property. Or there's been a junk car with flat tires and a growing oil slick parked in front of their unit for months and yet still no action. So, one morning, Mr. Irritated wakes up and thinks "Hey! I pay my fair share. If I can't get service, I'm not paying any more!"

There are several courses of action that the board can take. Keep in mind that anyone that has withheld money has already had the last straw broken and is not likely to be very cooperative. There's going to be a certain level of resentment built up that must be overcome before communication can take place. So, rather than write a letter or email which can easily be misconstrued, a personal phone call or visit is the best first step. This will address the feeling of being ignored. Express concern and get to the bottom of the problem. This is a fact finding mission so get the facts: dates, places, he saids and she saids. Keep notes. Then ask what it will take to resolve the issue now. This is where it gets tricky. The answer you get may or may not be reasonable.

If the request is entirely reasonable, assure that steps will be taken to move it forward. Give a time line for getting the task done and ask that you be called personally if it isn't. Ask that the assessment be brought up to date in the meantime so late fees aren't incurred. Offer to

waive any that may have already been assessed if the balance is resolved within 48 hours. This will allow a graceful way out and demonstrate that you sympathize.

If the request is not reasonable, not the HOA's responsibility, not budgeted or planned, explain that to make sure that it's understood. Maybe it has not been properly explained before. If it has and the response is "I could care less. I'm still not paying until it happens." then conclude the conversation by saying you understand what's being requested but can't accommodate the request for such and such reasons. Add that the request can be formally appealed to the board but that withholding money could negatively affect the board's decision. Ask that the hold back be paid so late fees and collection costs aren't added to the balance.

Another scenario to consider. The hold back may be a cover up for a lost job or some other financial setback. That throws a different light on the issue and solution. Ask if there is something else, like a financial problem, that's driving it. You might be surprised how often it is and, when caught off guard with your question, an owner will 'fess up. If this is the case, focus on the truth of the matter. If there is a financial problem, maybe there is an accommodation the board can help.

Shaking down the HOA can be based in exasperation, a hidden agenda or personal finances. It's important to understand the underlying motivation so that reasoned action can be taken. Getting to the bottom of it will help you make nice. ☺

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## Ask the HOA Expert

**Q** Our board president recently resigned and four board members remain. Our vice-president became our "acting" president until a new director is appointed and new officers ratified. Our former president only voted to break a tie. Our vice-president says he can vote on all motions, rather than only to break a tie vote. Is he correct?

**A** All board members, regardless of office held, are entitled to cast a vote. So the president is entitled to cast a vote but often doesn't unless to break a tie. However, when it comes to controversial votes, it is in the president's best interest to cast a vote, particularly when he/she is opposed to the motion.

**Q** Do you recommend cleaning gutters twice a year? Some board members think it's a waste of money.

**A** It depends. If there is tree coverage, absolutely, at least twice a year and more often where there are regular clogs. If there is no or little tree coverage, once a year might suffice. However, even when there is no leaf debris, composite roofing sheds rock granules which wash into the gutters and create a sludge that impedes rainwater from draining. This sludge needs to be removed every year so the gutters are running to maximum efficiency.

**Q** For years, our board refused to put money away for projects like roofs, fences and painting. Well, now the roofs need replacing, the paint is peeling and fences are falling down. Home values have been compromised and special assessments to pay for the projects are routinely shot down by the membership.

**A** The concept of planning for future projects is called a "reserve study". It is a tried and proven way of dealing with these predictable expenses and events. Moreover, a fairly funded reserve study shares these costs with all members along the, usually, 30 year time line

rather than nailing the unfortunate ones at special assessment time. Special assessments are the product of poor or no planning since virtually all reserve events can be anticipated many years in advance.

The board has a fiduciary duty to run business in a reasonable way. It also has a duty to protect the interests of current and future members. Any board that fails to plan for foreseeable events and expenses has failed in its duty.

Most governing documents obligate the board to budget for known (or knowable) expenses. Failure to plan for reserve events is usually indicative of a systemic problem like the operating budget being underfunded and poor maintenance. The results are plain to see: erosion of the property and home values.

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The board usually has the authority to set the budget and reserves at a level to take care of HOA business without approval from the members. If your board is required to get member approval, it could easily roadblock getting things done. But often, the board simply doesn't raise the issue because naysayers won't like it and the board doesn't want to get yelled at. However, naysayers are usually few

and far between because most want to protect the value of their property and know it costs money to do it.

Take this message to the board: "You have fiduciary duty to reasonably protect and maintain common assets. Reserve planning and funding is an accepted and fair way to do it. Well?"

**Q** According to our governing documents "If a home owner desires to decorate the exterior in a color and finish other than that supplied by the builder at the time of construction, then the consent of 50% of the members of the association and all holders of first mortgages shall also be required prior to such change being effected."

We had an owner who wanted to paint their home a different color and the board told him to put together a written request and color samples for a member and lender vote as required. Instead, he wrote a petition and went door to door to gather signatures. One of the signatures belonged to the board president. Almost half of the members never saw the petition. He has started painting.

**A** I hope your board president has been removed from office for allowing and encouraging this violation to take place. HOA decisions should never be made by door to door petitions although petitions can certainly be used as the basis for holding a meeting. But the final decision should be made at a meeting where all owners are allowed to discuss the pros and cons and then make an informed decision.

By the wording of your governing documents, approval of 100% of the mortgagees is required in addition to 50% of the members. No mortgagee approval was obtained so that killed the request. But realistically, getting any of the mortgagees to respond to such a request is impossible since there is no mechanism for such decision making.

The person that wrote this provision into the governing documents was ignorant about how the homeowner association system is designed to work



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and may have tied the members' hands forever from making a paint color change.

However, the board should require the offending member to repaint according to the standard. He was told what the procedure was and circumvented it. If the board allows the offense to stand, it will be difficult to enforce any standard at all.

**Q** What is the correct procedure to select officer positions? Historically, my board meets immediately following the annual meeting, someone nominates a director to the position of president, someone else "seconds" the motion, followed by a show of hands to determine if a majority vote exists. How do we get a second or third nominee considered in this procedure? We always wind-up with the old president serving another one-year term.

**A** It's up to the directors to select the officers so the scenario you describe is normal. If you want things to change, someone (you?) needs to campaign with the stated goal of becoming president.

That strategy needs to include getting other directors to support that goal before the selection meeting. 🗳️

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### Debugging the Commons

In wet climates, boggy soil conditions can hamper use of turf areas. Normal soil makeup consists of small pieces of rock, organic debris, water and air. In many soils (especially clay soils), the air content is highest in the upper 24 inches. As you go deeper into a soil, the weight of the overlying material compresses the soil and squeezes out the air.

When it rains, water enters soil and

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pushes the air to the surface. Gravity then takes over. If the yard slopes, the water within the soil begins to flow downhill. Level yards suffer as the movement of the water through the soil is minimal. You can accelerate the movement of water or intercept and redirect subsurface water by installing gravel covered perforated drainage pipes in narrow trenches. Water, just like most things, takes the path of least resistance. Subsurface water would much rather travel through gravel and pipes than force its way through soil.

A linear french drain is a moat that protects the yard or buildings from subsurface or surface water. It is constructed by digging a 6" wide by 24" deep trench. To intercept subsurface water to dry out the yard, install the trench along the highest part of the yard and extend it to the lowest part of the yard. If the intent is to protect buildings from water, construct the trench approximately 4-6 feet away from the foundation. In many cases the trench system is U shaped as it passes around the building.

If the yard is nearly level, a series of inter-connected trenches will be needed. **IMPORTANT:** Before trenching, make sure to perform a utility line locate to ensure you don't cut gas, water or electricity lines. Cutting utility lines could be extremely hazardous. To excavate the trench, use a trenching machine capable of 6" wide by 24" deep trenching. Use a builder's level to determine how deep to dig the trenches.

Yards that appear flat often have sufficient slope that allows installing the pipes so that they will extend to daylight at the lowest portion of the area. An optical or laser builder's level will reveal the high and low portions. The bottom of the trench can be level or it can follow the contour of the land much like a fence. Daylighting the pipe exit (terminating the pipe at the surface) will obtain the best drainage results.

Once the trench is completed:

1. Compact any loose soil in the bottom of the trench. A 6-foot 4x4

works well for this purpose.

2. Install commercial grade landscape fabric to line the trench overlapping it 6" starting at the exit end of the trench. Leave an extra 6" of fabric at the top of the trench on both edges. To hold the fabric in place, weight down the exposed fabric with 2x4s or rocks.
3. Install a 2" layer of washed gravel in the bottom of the trench.
4. Install perforated drain pipe with holes facing down. The reason the holes should point down is that the water table builds from the bottom up. If the holes point down, the water enters the pipe sooner than if the holes are pointed up. During wet periods, water is already up to the bottom of the holes and if it rises higher than the holes, the water flows into the holes and is carried away by the pipe.
5. After the pipe is installed in the trench, cover it with washed gravel to within 1" of the surface tamping down the gravel with your 4x4 to compact it.
6. Fold the 6" tails of landscape fabric to overlap the gravel.
7. Place sod over the gravel to disguise the trench. Or, to control surface water better, allow the gravel to be exposed to the surface. Widen the trench in the upper few inches of the soil to disguise the drainage system. Use colored stones, gravel or large stepping stones to create a walkway. To further enhance the illusion, install the trench with gentle curves as it traverses the lot.

From [www.AsktheBuilder.com](http://www.AsktheBuilder.com) 🗺️

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### Know an ARC?

The Bible tells the story of Noah and his ark, a vessel that carried his family

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and a pair of all animals to safety when God caused a great flood to cover the earth. One of the most influential committees often found within a homeowner association is the ARC (Architectural Review Committee). This committee's mandate is to oversee modifications to member units/homes that are consistent with approved policy and to preserve or enhance property values.

The ARC is an administrative function. For it to function properly, the board should enact clearly written guidelines for the committee to follow rather than let it make it up as it goes. If the design guidelines are not present or complete, the first order of business is to enact a policy with as many specifics as possible so that the committee merely has to compare an ARC request to the policy. If the policy is complete, it will save both the ARC and members an enormous amount of time in sorting out what's what. A well written Architectural Design Policy leaves little to chance and committee discretion.

The Architectural Design Policy should be easily accessible to all members, ideally, on the HOA's website. Regular reminders of the policy should be noted in newsletters with something like "The HOA has appearance and design standards which must be approved by the Architectural Review Committee. Direct all approval requests to (fill in the blank)".

It is common for governing documents to reference architectural design or restrictions but the criteria is usually far from complete or can get outdated. The board has the authority to expand the criteria as long as it's in line with the governing documents. If not in line, the governing documents must be amended. It's always a good policy to circulate any new design policy with the members for review.

There may be design changes that are needed in order due to the passage of time. For example, cedar shake roofs may have been dictated as the original standard. However, cedar shake roofs are very expensive, difficult and costly to maintain, have a short useful life and

a much higher fire risk. Alternatives like asphalt composition roofing that mimic the shake look make sense, reduce cost and maintenance plus increase fire safety. There are other design changes that may make sense like this one.

Another reason for design change is to achieve contemporary styling. Paint color, in particular, can make a tremendous difference in curb appeal. While that chocolate brown looked groovy in the 70s, it really drags buyer appeal down now. It is very important not to lock the HOA into a color palette that is detrimental to resale value. Color palettes should be reviewed at least every five years to make sure it is keeping pace with buyer taste.

Fences have also undergone improvement in both material and design. That privacy wall sided to match the building should be replaced with a contemporary design that achieves privacy with cheaper and easier to maintain materials.

One of the most significant design values is landscaping. Developers often install landscaping that looks great during the sale phase but over years overgrows and becomes unsuitable to a mature landscape look. There are new plant and bush species available that improve appearance while reducing maintenance and water requirements. The design requirements should give specific guidance for practical, aesthetic and integrated results, rather than each homeowner installing a hodge podge of plantings. In common wall communities like condominiums, resident plantings should be restricted to patios, decks and balconies. Allowing common area planting makes it very difficult for the landscape contractor to maintain a consistent look and entices some residents to commandeer an ever expanding amount of common ground.

While the ARC has a fair amount of power to review and approve requests, the board has the ultimate responsibility for decisions. There should always be an appeal process that provides for board review. Appeal can be simplified if the board also acts as

the ARC since the issues are pretty much already understood by all parties. The appellant is simply being given one more chance to convince the board of why that lime green paint really will dress up the neighborhood.

One important ARC philosophy is to promote good design rather than block creativity. Pay close attention to this one. The attitude of the ARC should never be: "NO...now what was your question?". Responses should be considerate and helpful. Remember, members often are members emotionally invested and passionate about their ARC requests. It's extremely important to guide the process carefully and not alienate a neighbor. Compromise if possible. If the request is just too far off base, an expression of empathy softens the blow. Or, if the request has some merit in the overall design policy, suggest trying to get it approved at the next Annual Meeting as a new option. That leaves the door open to a "maybe" if a majority of the members agree.

Keeping the HOA design policy afloat takes skill and attention. Be flexible and recognize that tastes do change. The wise ARC keeps a finger on the pulse of design.

*For a sample ARC Policy, see [www.Regensis.net](http://www.Regensis.net) 📄*

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### **Paradigm Shift**

Homeowner associations across the nation have discovered the advantages of planning ahead for major repairs by following a well executed Reserve Study. A Reserve Study identifies the building and grounds components that the HOA is responsible to repair and replace that have useful lives of, typically, up to 30 years. These cyclical repair costs are often enormous and not included in the annual Operating Budget. So, if funding is not accumulated in advance over a period

of years, you guessed it, Special Assessment Time!

A properly funded Reserve Study is fair to all members along the 30 year time line. By dividing up the costs into 360 monthly fees (the case with condominiums and other common wall communities), each member pays only the part of the 360 months applicable to their time in ownership. If all members are paying monthly, no member will get stuck paying for someone that didn't. A special assessment means some just got nailed because those that bought and sold skated on paying their share of the costs.

But your HOA is different, right? Even if these costs have been handled by special assessments in the past, your board won't continue this clearly unfair method...right? Sadly, many boards keep trudging the same path because "that's the way it's always been done". Progressive states have realized that special assessment funding is irresponsible and have enacted reserve funding requirements for their HOAs. In those states that haven't, it's incumbent on the board to plan for these events without being told to. It is simply the right thing to do and to do otherwise is irresponsible.

Adopting a fair and adequate reserve funding philosophy is what the business gurus call a "paradigm shift". There is often resistance from some HOA members who view reserve funding as an added cost. These folks like to live on the edge and often have more month left over than money. While individuals have the right to live on the edge withfor personal finances, this does not work in a homeowner association where the finances are inextricably linked. Responsible reserve funding recognizes this reality and charts a course where all participants pay their share.

While a Reserve Study charts the course, it doesn't establish the policy. A funding plan without a policy is like a ship without a rudder. It may sail straight for a while but then change course because a new captain is at the helm. A Reserve Study & Funding

Policy holds future boards to the original course. It identifies what will be included in the Reserve Study, how it be funded and restrains a future board from deciding not to follow it. Since boards do change, having a clear policy is critical. Adopting one will help stop the boom and bust cycle of one board putting money away and the next one spending it.

If your homeowner association has not had a professional Reserve Study performed, do yourself a favor and do it. Having large numbers of units/homes is not the determining factor whether to do it or not. Actually, the smaller the HOA, the more critical a Reserve Study is because the cost per member goes up. So, get it done and adopt a Reserve Study & Funding Policy so this paradigm shift shifts into high gear.

*For a list of reserve study providers which carry the Professional Reserve Analyst (PRA) credential, go to [www.apra-usa.com](http://www.apra-usa.com) 🗺*

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### Fall Lawn Order

Ahhh....the fall leaves are turning colors and there is a nip of winter in the air. But before you get too mesmerized by Indian Summer, remember that there are some important pre-winter landscape preparations yet to get done.

**Irrigation Systems** need to be turned off and winterized. Leaving the clock on could damage the irrigation system if the power is interrupted during the down time. In some models, the batteries would put the controller into default mode and prompt the solenoids in the valves to "dry-fire" as the clock cycles over and over again. To guard against this, it's best to disconnect the power to the clocks and remove the batteries.

**Water Supplies** must be turned off at the gate valves. Then, open the drain

valve to allow water to drain out of the system. While properly installed systems should drain completely, the only way to ensure that this is the case is to blow out the system with compressed air.

**Fertilization.** Shrubs should receive a good 10-10-10 shrub fertilizer and lawns a Fall and Winter fertilizer like 10-7-14 "slow release". This blend of fertilizers will feed the roots without forcing new growth on the leaves. This should keep your lawn and shrubs looking healthy during the winter.

**Moss Control.** Lawn moss becomes active in the Fall and Winter. Moss occurs in areas of poor drainage, shade and heavily compacted soil. To counteract moss, prune trees to reduce shade, aerate lawns to relieve soil compaction, provide improved drainage and apply a moss control product.

**Clogged Roof Gutters.** Gutter overflow can cause a lot of damage to landscapes. Schedule now to have your gutters cleaned after the leaves fall, usually by mid December.

**Correct Drainage Problems.** Water can become a serious problem in the Fall as the ground becomes saturated. A below ground drainage system can be installed to prevent water from accumulating in lawns and bed areas.

**Inspect Trees.** Have a licensed arborist remove tree limbs that may come down in a winter storm.

Now's the time to get tough on lawn order. Give your landscape what it needs to weather the winter storms. Next spring, your landscape will be changed for the better. 🗺

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### Forgive & Forget

Basic human nature causes us all to offend others from time to time. Sometimes it's done unintentionally while other times with malice and

forethought. But regardless of intent, if we are to coexist in peace, making amends is essential. Here are seven "A's" to go about it:

**Address everyone involved.** If your offense was perpetrated in a group setting, you should make amends to everyone that was there, both the target and the audience. The audience part is important because onlookers may not have been personally offended, but may carry the impression that you're a jerk until you disabuse them of the notion.

**Avoid if, but, and maybe.** Don't rationalize what you did. ("You made me mad"). Take responsibility for your actions.

**Admit your mistake.** Say that you lost your temper, you misunderstood or whatever it was that triggered your inappropriate behavior.

**Acknowledge the hurt.** Admit that damage was done.

**Accept the consequences.** If there is something that needs to be restored (stolen, broken, etc.) restore it and pay the price.

**Alter your behavior.** Promise to do better in the future.

**Ask for forgiveness.** This may be the toughest part because you may not get the forgiveness you ask for. You can't control the response but you can control your desire for it. Expect the worst and hope for the best. Accept whatever response you get. Either way, it doesn't change your part of the process.

Forgiveness is a life changing event for those that forgive and for those that ask for it. We're all guilty of offending our neighbor. Forgive, forget and be set free.☸

## A Matter of Attitude

There's an expression, "The customer is always right". This doesn't mean that the customer is always right because the customer is frequently wrong. It refers to the attitude one should have in dealing with others. If one party dismisses, minimizes, ignores or is unwilling to hear the other out, it

creates a wall in the relationship that impedes a successful outcome. That wall must be removed before productive communication can take place.

In homeowner associations, this scenario plays itself out as boards and members position themselves for confrontation. Interestingly, this "us and them" mentality overlooks the fact that board members are general members too. Although the board represents the homeowner association and members represent their own interests, the end result equally impacts one and all.

There once was a fellow named Ben  
Who confounded his friends now and then

By climbing the stairs  
And screaming, "Who cares?"  
Again and again and again.

*Michael Palin*

Knowing that someone cares is one of the most important components of human relationships. We all struggle with the answers to perplexing questions, many of which have no answer that we can understand in this life. The comfort of a caring and sympathetic ear can go a long way to filling that void.

This concept goes for building harmonious relationships within your HOA. Even though the question may be business related like pets running amuck or someone parking in your space, the fact that the board's demeanor is one of caring can make the difference whether an issue comes to resolution or remains a thorn in the corporate rear end.

When it comes to contention and confrontation, it is essential to first build a perception of caring. Caring doesn't mean you agree with the other party. It means you give them respect as a human being and hear them out. It means proposing a compromise whenever possible rather than invoking "The Law". If this is the platform on which the board builds HOA business and personal relationships, much fruit will follow.

Who cares? YOU should. It's only a matter of attitude.☸

## Money for Nothing

Dear Mr. Secretary of Agriculture,

My friends Darryl and Janice received a \$40,000 check from the federal government the other day for not raising hogs. So, I want to go into the "not raising hogs" business myself next year.

What I want to know is, in your opinion, what is the best type of farm not to raise hogs on, and what is the best breed of hogs not to raise? I want to be sure that I approach this endeavor in keeping with all government policies. I would prefer not to raise Razor hogs, but if that is not a good breed not to raise, then I can just as easily not raise Yorkshires or Durocs.

As I see it, the hardest part of this program will be keeping an accurate inventory of how many hogs I haven't raised. If I can get \$1,000 for not raising 50 hogs, will I get \$2,000 for not raising 100 hogs? I plan to operate on a small scale at first, holding myself down to about 4,000 "not raised" hogs, which will give me \$80,000 income the first year.

These hogs I will not raise will not eat 100,000 bushels of corn. I understand that you also pay farmers for not raising corn and wheat. Will I qualify for payments for not raising wheat and corn not to feed the 4,000 hogs I am not going to raise? I want to get started not feeding as soon as possible, as this seems to be a good time of the year to not raise hogs and grain.

I am also considering the "not milking cows" business, so please send me any information on that also. In view of these circumstances, I understand that the government will consider me totally unemployed, so I plan to file for unemployment, free health care, housing and food assistance as well.

Regards,  
*Duster Benton*

PS: Would you please notify me when you plan to distribute more free cheese?☸