



# The Regenesis Report



Pacific NW

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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## The Three Rs

Every homeowner association has various methods available for establishing acceptable community standards, generally called rules, regulations and resolutions (Three Rs). Those standards must comply with state and federal law. For example, the board cannot enact a rule that violates Fair Housing Act.

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

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

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

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

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

**Policy Resolutions** define acceptable community standards. An example of a policy resolution: Many governing documents are unclear with regard to homeowner association versus owner maintenance responsibilities. Who repairs a water supply line after it enters an

owner's unit? Who repairs damage from a flood originating in an upper unit? There are many variations on this theme that could be answered in a policy resolution that defines each item according to who is responsible. This particular resolution directly impacts homeowner insurance and owner responsibilities. Other significant policy resolutions deal with money collection, architectural guidelines and enforcement procedures.

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

**Mechanics of a Resolution.** The resolution should first cite the relevant provisions of the governing documents and any applicable state statute, especially those sections which give the homeowner association authority to establish policies. Following the authority section are the details of the resolution. It is highly recommended to circulate proposed resolutions to the membership for a minimum 30 day period for comment before the board votes on it. Once approved, it should be dated and signed by the board president and the secretary.

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

Rules, regulations and resolutions help provide a clear and systematic way to deal with routine issues. Once enacted, they need to be enforced consistently and apply to all members, including the board.

For sample Rules, Regulations and Resolutions, see [www.Regenesis.net](http://www.Regenesis.net)

## Ask the HOA Expert

**Q** Our board received a certified letter from a homeowner demanding a copy of all board meeting minutes for the past five years to be sent to him within 10 days. This request represents a significant investment in time and effort. Are we obligated to comply with this request?

**A** What you describe is a common tactic to gain control. The logic goes something like this: All owners have a right to most HOA information and records. So, an owner that is unhappy for some reason initiates a series of demands with the message that "I want it now or else!"

Getting the requested information is secondary to keeping the board off balance. Intimidation tactics are highly effective when they get the board worrying about the "consequences" (OR ELSE). Usually, though, when the board complies, it triggers another demand letter. It's a game of serve and volley, a game the board can't win.

While it's true that members are entitled to most information, the board is not obligated to provide it at no cost. Charge a reasonable cost for requested records in advance. When a price is put on the demands, they usually go away. Or better, post rules, policies, governing documents, budgets, financial statements, minutes and newsletters on an HOA website so all members can self-help.

**Q** We have members who would like to volunteer to do minor repair work on such things as our clubhouse, trails and pool. The board is concerned about the liability factor.

**A** As long as the work is not precarious (ladder work, on the roof, etc.) there is nothing wrong with allowing volunteers to do simple tasks. In fact, the board should encourage volunteerism and find outlets for those that are so inclined.

**Q** The board has announced that collection and rule violation hearings will be held in public. Is this advisable?

**A** All collection and rule violation issues should have an established process which includes notifying violators in writing, stating the specific details, the correction needed, the penalties for failure to comply and the right of appeal. If an appeal is requested, a private hearing should be held at a convenient time and place where the board and accused can discuss the issue.

It is not appropriate to hold public meetings since the accused may not be guilty or there may be extenuating circumstances. The board should never engage in public humiliation of its members. Besides a legal challenge from an offended owner that could embroil the HOA in a lawsuit, it just makes practical sense when neighbors are governing neighbors.

**Q** Our HOA has only one bank account for both operating and reserve funds. This frequently gives the board the impression that there is more spendable cash than there really is. If we run short, money that was intended for reserves gets tapped.

**A** Operating and reserve funds should be kept in separate bank accounts for exactly the reason you point out. Reserve funds are intended for specific major renovation scheduled to take place in the future, some times many years away. If reserve funds aren't protected from operating budget shortfalls, the money won't be there in the future when it's needed and the HOA will be forced into unfair and unpopular special assessments.

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**Q** I read somewhere that the cost of a reserve study should be paid for out of reserve funds rather than the Operating Budget.

**A** It depends. It's reasonable to pay for the initial reserve study with reserve funds.

Afterwards, some states require annual reserve study updates. Whether mandated by state law or not, it makes good sense to update the reserve study annually to keep it accurate, just like the Operating Budget. So the cost of an annual update could be included in the Operating Budget. If the reserve study is only being updated every few years, it makes sense to plan for it in the reserve study.

**Q** Our HOA has ongoing problems with cigarette smoke which permeates the hallways and stairwells every time a resident smoker comes and goes from their unit. The ventilation system recycles the smoke throughout the common areas. Besides the bad odor, I'm concerned about health hazards.

**A** Second hand smoke (also called ETS-Environmental Tobacco Smoke) is a serious health hazard and the board is obligated to deal with it if it is impacting residents and their guests. The numerous deaths related to second hand smoke are well documented. For more, [www.meds.com/lung/smoking/enviro\\_nmental.html](http://www.meds.com/lung/smoking/enviro_nmental.html).

This issue is much more than just a nuisance and the board needs to respond to complaints with real action. The easiest place to start is a ban on smoking in all common areas, including decks, patios, common hallways, stairwells, elevators, lobbies, building entries and meeting rooms. You might consider the pool area as well.

Some boards worry that bans on smoking will negatively impact property values. In reality, there is growing support for smoke free HOAs which would be highly prized by non-smokers who would pay a premium to live there. Something to think about.

There is no Constitutional right to smoke. Moreover, inflicting a health hazard on others is both against HOA nuisance regulations and the law. The board should take this issue seriously. *For a sample No Smoking Policy, see the "Policy Samples" section at [www.Regenesis.net](http://www.Regenesis.net).*



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**Q** Our HOA has extra parking spaces which are first come/first serve. There are several residents which park extra vehicles and boats there long term. This doesn't seem fair.

**A** If the HOA has extra parking spaces, it should not allow any one resident to commandeer them, especially for no cost. These are revenue generating assets which can be rented long term at market rate. In many urban settings, a reserved parking spot is worth \$50 or more a month. The board should charge market rent on a yearly basis. This way, parking revenue benefits *all* HOA members by helping reduce HOA fees.

**Q** Our governing documents, like most, prohibit co-owners from serving on the board at the same time. Does this principle apply to committees?

**A** No. Committees can be composed of anyone that has an interest in serving, including renters. As long as the members are serving effectively, the board should encourage such participation. Since committee members are appointed rather than elected, the board can unappoint them if they aren't doing their job.

**Q** Our HOA board wisely ordered a reserve study this year. The study was completed and indicates that we are seriously underfunded. The study includes a funding recommendation that will substantially increase our fees. Is increasing reserve contributions a

decision that the board alone can make? Do the general members have the right to voice their opinions, concerns, etc. prior to the board's decision. Should the reserve study be available to the membership to review?

**A** As long as the governing documents give the board authority to set the budget (usually the case), the board alone can make the decision. The board doesn't have to follow the reserve study provider's recommendation but departing from it will encourage greater challenge from

members, particularly those that don't want to pay more. ("If the board can propose an increase lower than the professional, why not propose one even lower still?")

If the governing documents require the board to get member approval for increases over a certain amount, the board will have to bring the matter for a vote. In either case, it's wise for the board to hold a special meeting to discuss the reserve study and its implications, particularly if there is a significant increase in fees indicated. Ask the reserve study provider to present the study and answer questions. This will add a much higher level of credibility to the process and take the spotlight off the board.

One mistake some boards make is deciding ahead of time that the members won't approve a large increase so a much smaller one is proposed. It is always preferable to present the higher recommendation and let the chips fall where they may. If the case for the professional's funding plan is made and a majority of the members still vote it down, future shortfalls can be blamed on the membership, not the board. If the board decides on its own to under fund, it has failed in its fiduciary duty to budget properly and should be held responsible for shortfalls.

*For more, see Reserve Planning at [www.Regenesis.net](http://www.Regenesis.net)*

**Q** We have an owner who has not paid an assessment for several years. The property is being used as rental property.

**A** Your board needs to adopt a formal Collection Policy. There is one you can use as a model at [www.Regenesis.net](http://www.Regenesis.net) in the Policy Samples section. That policy calls for filing a lien against the property and other aggressive measures which can include an assignment of rents provision. Have the proposed Collection Policy reviewed by a knowledgeable attorney to ensure it complies with the governing documents, federal and state statutes. Then, the proposed Collection Policy should be circulated for comment to the members before enactment. Once enacted, start enforcing the provisions

on any owner who is delinquent. 

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## Tenant Tenets

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 unit 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.

Now, short term rental services provided by, for example, Airbnb.com and VRBO.com, are making the situation much more complicated as virtually any condo or HOA home anywhere can be rented by the night.

These factors point to ongoing problems for full time residents. If this is a reality, it's important for the board to press for consensus among the owners about how to handle rentals of all kinds. 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. It's a win/win.

**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 presses 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 [Regenesis.net](http://Regenesis.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 gender, faith, family, culture or race. When it comes to tenants, don't be tentative. 

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## News Fit to Print

Homeowner association newsletters are a great way to enlighten, inform, remind and encourage. Inviting the membership to HOA events and meetings helps neighbors meet neighbors. Frequent reminders of important rules or architectural policies helps build a friendlier and more harmonious community. Recognizing volunteer efforts encourages others to step up. Newsletters needn't be long and involved, just relevant. The more you do it, the easier it gets.

Here are some tips to make your newsletters fit to print:

**Focus on Building Community.** Get HOA members to become participants rather than observers. Offer opportunities to do that on committees and social events.

**Understand Your Audience.** How old are they? What is their financial status? How do they like to spend their time? Find out by getting feedback from your readers with a questionnaire.

**Inspire Your Readers.** Make sure events, activities and volunteer opportunities are well publicized. Create headlines to grab the reader's attention.

**Be Consistent in Layout and Content.** If you have a "Rules & Regs Corner" which highlights a particular HOA rule or policy, publish it in every issue. Always include essential contact information (mail, email and phone).

**Dash the Draft.** Write the rough draft as quickly as possible and then go back to polish and flesh out the details.

**Reuse Articles.** Many articles bear repeating and as time passes will have new eyes that see them for the first time. Repeat seasonal reminders. Create folders on your computer for the months you publish your newsletter and put article files in the months they fit best. In time, you can build a reservoir of content to draw upon that will make newsletter writing much simpler and quicker.

**Lead With Your Strong Suit.** Put the most important information up front. Organize the strongest points of an article before you write it.

**Keep Articles Short.** If an article is long or complicated, readers will move on. If there is simply too much good content to abbreviate, break the article into several articles.

**Give Credit & Contact Information.** Include the newsletter committee, writer and editor names and contact information.

**Be Positive & Uplifting.** While criticism has its place, too much of it is a downer and chases most readers away. Strive for the positive. Be upbeat.

**Proofread.** Editing is a rewording experience. Carefully review your work for grammatical and spelling mistakes or get a detailed oriented person to do it for you. Make sure your facts are straight.

**Reprint with Permission.** Search the

internet for content that would be of interest to your readers. If you find an article that includes author and contact information, be sure to get permission before reprinting and give credit where credit is due. (*For an archive of over 1800 HOA related articles sorted by subject, see [www.Regenesis.net](http://www.Regenesis.net) Article Archive.*)

**Have Fun With It.** Give them a giggle or two. The internet is full of jokes, puns and cartoons.

**Publish Pictures.** Folks love to see themselves in print. Share event pictures, photos of board members, the manager, committee members and other volunteers.

**PDF It.** Programs like Adobe Acrobat make it possible to convert word processing and newsletter programs into Portable Document Format (PDF) which can be posted on the HOA website or emailed to those that do email. PDF was designed with HOAs in mind. Using it can save thousands of dollars in printing, supplies and postage each year plus countless processing hours each year required of paper newsletters.

**Get Advertisers.** If your community is large enough and newsletter regular, it could attract advertiser revenue from Realtors, insurance agents, painters and remodelers.

Newsletters are a wonderful way to bind people together. Keep your homeowner association in the know with timely and relevant newsletters at least four times a year. ☀

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## Email WMDs

In the age of instant communication, email often plays an indispensable role in homeowner associations (HOA) operations. Boards, managers, homeowners, attorneys and contractors

routinely use email properly and efficiently. Under most circumstances, email is a boon. However, email has some major pitfalls when misused. Here is a list of tips that will keep email an effective communication tool instead of a weapon of mass destruction:

**Never assume that only your intended recipient will read your email.** Emails can easily be forwarded to others, intentionally or unintentionally. Emails can be intercepted, deleted or easily modified and forwarded. Before sending an email, ask yourself if you would die of embarrassment if the wrong eyes read it. If the answer is yes, don't send it.

**Email is not a conversation.** An email, while a great form of communication, still amounts to a monologue not a dialogue. Email lacks the dynamics of face to face which includes nuances like sight, sound, tone and body language. Writing effectively is an art form that few master while most communicate pretty well in person.

**Forever is a long time.** Emails can be archived for years and may later be retrieved, especially in the context of litigation. Your off hand email remarks may incriminate you years later.

**Avoid email for complex issues.** Lengthy emails often get misinterpreted and when multiple recipients are weighing in, someone is not going to get the whole message. Save complex topics for face to face meetings where everyone is there to hear the same thing at the same time.

**Flame off.** Avoid the temptation to send flaming emails, even when the recipient deserves it. Angry emails seldom change hearts and minds and often burn bridges.

**Safeguard privileged information.** In a genuine effort to keep the lines communication open with members, a

well-meaning board member may share an email to a non-board member containing advice from legal counsel. This practice, even with good intentions, could effectively waive the attorney-client privilege.

Email, like weapons, can be used for good and evil. WMDs have a way of doing substantial and lasting damage. Before you fire off an email, make sure you're pointing at the right person and the email is properly loaded. ☀

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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:

**Develop a communication system.** 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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### Bridge Over Troubled Water

Some think that belief in God is a crutch for weak people who cannot make it on their own. God is indeed a shield to protect us when we are too weak to face certain trials by ourselves, but he does not want us to remain weak. He strengthens, protects, and guides us in order to send us back into an evil world to fight for him. And then he continues to work with us because even the strongest person on earth is infinitely weaker than God and needs his help.

God promises to give us strength to meet challenges, but he doesn't promise to eliminate them. If he gave us no rough roads to walk, no mountains to climb, and no battles to fight, we would not grow. He does not leave us alone with our challenges. Instead, he stands beside us, teaches us, and strengthens us to face them.

When you're weary, feeling small,  
When tears are in your eyes,  
I will dry them all.  
I'm on your side,  
When times get rough  
And friends just can't be found.

Like a bridge over troubled water  
I will lay me down.  
Like a bridge over troubled water  
I will lay me down.

This is the day that the Lord has made.  
Let us rejoice in it.

*From The Bible and Paul Simon ☀*

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