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Pacific NW

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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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Protect Against Theft

From time to time, a news story breaks about an HOA management company embezzling client funds, leaving the clients to pick up the pieces. While the funds are no longer available, the bills do not stop. Unless the homeowner association has insurance to cover the theft, it can leave a financial hole that will need to be filled by special assessment. It is vital that HOAs take measures to protect against theft from a variety of causes.

Fidelity Insurance protects against theft, fraud or embezzlement by employees, board members and the management company. While a management company may carry a bond against this kind of theft, the bond rarely is large enough to cover all its clients' funds.

How much Fidelity Insurance is needed? The amount varies depending on governing documents; however, FHA (Federal Housing Administration) has a requirement that an HOA must have fidelity coverage for at least three months fees plus all reserve funds. The coverage amount needs to be adjusted annually since this total will change.

Many homeowner associations rely on online banking and computers for cash management. As a result, suffering from computer fraud is more likely. Hackers have been known to drain bank accounts and good luck finding it! To complicate matters, a computer is not needed to commit fraud. Funds can be transferred by cable, fax and telephone. While many banks insure against this kind of theft, some may not so be sure to verify the coverage of depositor insurance with your bank. Also, verify that the fraud/embezzlement coverage with your HOA's insurance applies to computer

fraud.

Several fraud safeguards should be in place:

1. Have separate operating and reserve accounts. Board members (typically, the president or treasurer) should sign checks for expenses that are over preapproved limits or reserve fund expenses.
2. Have different people sign checks and reconcile the monthly bank account.

When it comes to computer use for HOA business, use a computer for HOA transactions that is not used for web browsing or email. Change bank account passwords from time to time. Computer firewall, antivirus and security software should be installed and updated regularly.

Finally, an annual audit by an independent CPA should be considered, particularly when the HOA has large cash balances which could attract the wrong attention.

Homeowner associations are a great target for embezzlers and hackers. Before your HOA becomes a victim, take action.

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Ask the HOA Expert

Q For many years, the board has not enforced architectural and design restrictions. Consequently, many unit owners have installed storm doors and/or changed the exterior light fixtures on their units. There is now little or no conformity regarding those additions or changes. Our recent reserve study shows that we are woefully underfunded, so conformity is the least of our worries! Should the board ignore reserving for these items and move forward until we are financially solvent? Will the non-conformity affect property values? Is a little individuality such a bad thing in an HOA?

A Yes, your board should reserve for these items for a number of reasons:

1. The HOA is responsible for doing so since it affects the common elements.
2. Non-conformity does reduce property values in common wall housing since the additions vary in quality and, frankly, some additions look awful (no accounting for taste).
3. Individuality should be limited to the unit interior. That is what the governing documents allow and if adhered to, no one will object other than guests.☺
4. The board has no authority to allow owner changes to the common area. Doing so does not legitimize the action, it only complicates enforcement for future boards and exposes the directors who approved such to personal legal liability for exceeding their authority.

Q A homeowner at our HOA recently presented a written work order to the landscape maintenance company. The contractor performed the unauthorized task which also happened to be beyond the scope of their contract. Can the HOA be held responsible for payment

of unauthorized work? Should the owners be held responsible for directives given to contractors who have been hired by the HOA?

A The homeowner ordered the work, the homeowner pays the contractor's bill. If the work impacts the common area and is not in compliance, the board should have it corrected, if possible, and bill the homeowner. Advise the homeowner that no further communication should take place directly with the landscape contractor. The board should also inform the landscape contractor that the HOA will pay for no extra work unless it is approved in writing by an authorized HOA representative.

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Q I recently became a board member. Previous boards for over ten years have failed to plan and properly budget so we have no reserves. The board decided to have a special assessment of \$1000/unit to boost the balance in reserves. We are also in the process of having a reserve study done. We are already getting blowback from members on the special assessment. One member questions whether we need to continue operating the swimming pool since it is lightly used. Another suggests selling off the clubhouse to raise money. How should the board respond?

A There are several issues here:
1. Special Assessments. It's best to have the reserve study done first to determine how much money is needed and how soon. The board wouldn't want to have to do two special assessments close together.

2. Closing the Pool. Operating a pool

is one of an HOA's biggest expenses. If a majority of the owners no longer want to pay for it, it may be time to discuss other options. Of course, you need to read your governing documents to see what the process may be, if any, for discontinuing an amenity. Shutting down an amenity may require the consent of the mortgagees. If only a vote of the members is necessary, it may be possible.

3. Selling the Property. This is a much more complicated issue that needs to involve an attorney. It may require 100% agreement of all the owners and their mortgagees.

Just because a member comes up with a bright idea doesn't mean the board needs to spend time and money chasing down all the details. Put these members to work investigating the feasibility of their suggestions. First, a petition should be circulated to the members to see if there is significant support for closing the pool or selling the clubhouse. If a significant number are in favor, say at least 25-35%, it's reasonable to schedule a special meeting to discuss the topics. Be sure to discuss the process with the HOA's attorney to make sure it conforms with applicable state statutes and the governing documents.

Q Our management company seems too busy to handle our HOA business. The board wants to evaluate other management options. Is there some form or checklist we can use? There are many management companies. How do we determine which one is best for our needs?

A Changing managers should be a last resort since every company comes with strengths and weaknesses. The board should discuss specific concerns with the current manager to see if expectations can be aligned. If the manager agrees, she should be given a reasonable time period to accomplish the changes. If the manager is not



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interested or able to comply, beginning the search for a new manager should start with the goal of making a change within three to six months. This kind of transition is complex and the board should take its time.

Managing HOAs is a specialty. While there are many real estate management companies, there are relatively few that do this kind of work. Do not consider any that don't specialize in it and have the clients to prove it. You will want a list of references from HOA clients comparable to yours.

Develop a scope of work. HOA managers charge according to the tasks outlined in the Management Agreement. The more you ask of them, the more they charge. Regular management tasks include:

1. Financial reporting, collections and bill payments.
2. Supervision of maintenance and contracts.
3. Rules enforcement.
4. Attending meetings to advise the board.
5. Responding to information requests (if it involves a unit sale, it usually carries additional charge).
6. Processing insurance claims (may involve additional charge).

There is a HOA Management Screening Checklist in the Manager Issues section of www.Regenesis.net available to Gold Subscribers.

Q My unit is on the ground floor. When I bought and moved in to my condo seven years ago, the upstairs unit was carpeted except for the bathrooms, foyer and kitchen. But recently, the upstairs owner switched to hardwood flooring. I can now hear footsteps and other noise coming from upstairs at all hours of the day and night. I notified both the upstairs owner as well as the board but nothing has been done to correct the problem. What can I do?

A You have the right to peace and quiet. If the upstairs owner wants hard surface flooring, an appropriate sound barrier should have been installed under it. There are options for soundproofing your ceiling that may be cheaper than fixing the neighbor's floor but in either case, the cost should rightly be borne by the neighbor who created the need for it. Press the issue with your neighbor, with an attorney if necessary, until appropriate measures are taken. The board should also enact a detailed policy on unit flooring to avoid this predictable problem. 🗑️

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Flying Solo

Whether due to rugged individualism, frugality or lack of viable alternatives, most homeowner associations are self-managed. One might suspect that most self-directed HOAs are small or lacking in common area amenities. Actually, many are quite large, complex and the kind that would typically have professional management. What caused them to go solo and what are some of the dynamics of self management?

According to The Owner's and Manager's Guide to Condominium Management "For self-management to be successful, unit owners must have plenty of time and experience and a professional attitude toward their work for the association. For example, the treasurer must understand basic accounting and be willing to devote adequate time to the keeping proper financial records plus timely collections and deposits. The chair of the landscape committee should have gardening experience so that the landscape contractor can be properly supervised. If the association is fortunate enough to have members who

have the three main attributes--talent, time and concern--self-management may be the best choice."

Size of the development is an important factor. Although it should not be the ultimate factor in deciding to self-manage, a sound case can be made for limiting self-management to HOAs of fewer than 30 units with limited common area space and no recreational facilities. The larger HOAs have more work. Most volunteers don't want or need another job, particularly an unpaid one.

The main advantage of self-management is cost. However, if the motivation for adopting self-management is purely economic, the board should consider that decision closely. It makes little sense to save each owner a few dollars a month in management fees when the value of their property many decrease by thousands of dollars as a result of that decision. Board members are seldom skilled in property management and all that entails.

Equally important is the question of who directs contractors, employees and volunteers. Supervision cannot come from an owner who simply wants to be the boss. Supervision should come only from a person with time and experience to oversee and control work performance properly.

The board must consider the legal implications of self-management, since the board itself is liable for its decisions or indecision. The board's responsibility is to both fellow owners and the general public.

Although many governing documents contain a hold harmless clause that seeks to protect board members from legal repercussions for their actions, this does not prevent their being sued for mismanagement.

If the members consider self-management to be an adventure, enthusiasm may be high enough to be

successful. However, that initial enthusiasm usually wanes as the demands on volunteers increase. A breakdown in the volunteer system spells disaster for continuity. Today's "house-afire" is tomorrow's "burn-out".

Consider the two really nasty aspects of self-management: having to enforce rules on or collect past due fees from your neighbors. Suddenly, the neighbor relationship becomes a master-servant relationship and neither party enjoys the new role it must play.

Controlling one's own destiny in a homeowner association is a sea fraught with both storms and smooth sailing. Under the right set of circumstances, self-management can work. As long as the approach is professional and business-like with a positive, affirming attitude, it can work. 🗝️

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Staking a Claim

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

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

ever seen a strange violet glow coming from attic vents after dark? Aha!

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

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

It is very important for the board to understand it's role as Defender of the Common Area. The common area belongs to all members and no one owner has the right to stake claim to it. Preventing claim staking requires constant vigilance by the board. Once one unit owner is allowed to stake claim, others will quickly follow suit thinking if it's okay for one, it's okay for all. Soon, there will be multiple violations and the board will have a heck of a time trying to undo it all. Be watchful and preempt these moves early.

If the horse is already out of the barn and there are already multiple violations, it's time to determine the scope of the problem and prioritize the violations according to flagrancy. Curb

appeal issues directly impact market values so violations of this kind you would want to deal with more aggressively. Violations like fencing, decks or storage sheds, or added rooms are the next priority. More minor offenses like owner planting beds, lawn ornaments, furniture and whirlygigs are lower priority although less expensive to correct.

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

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

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

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Storm Ready Roofing

While every element of storm preparation is important, the roof system is probably the most critical and most often overlooked. Consider that despite rain, hail, ultraviolet rays, foot traffic and building expansion and contraction, the roof system must continue to keep water from entering the building.

During a storm, the roof is a transfer point of wind energy and part of the first line of defense against immediate and future damage. How a roof is built is as important as what it's made of. A roof system should incorporate the following considerations: access, deck, slope, weight, traffic, local weather conditions, wind zone, codes, insurance and budget constraints. Proper maintenance and retrofitting of braces or hurricane straps can help ensure that damage will be minimal when tough weather hits.

Every homeowners association should treat the roof as a depreciating asset and every step should be taken to manage this asset to ensure the benefit of its entire service life. Here are some things you can do to help you prepare for the worst:

Create a historical file which includes:

- As-built roof specifications;
- As-built roof plan that shows the location of all penetrations and roof-top equipment;
- Manufacturer specifications and product data information on the roof components;
- Material and labor warranties.
- Contractor information and phone numbers.

Conduct Periodic Inspections. Roof systems should be inspected at least twice a year by a qualified roof consultant or contractor who has a good understanding of the basic components of the roof system. Spring and fall are good times to do this. Additional inspections should be ordered after severe hail and wind storms or after any installation of new mechanical equipment. If you haven't already assessed your property's vulnerability to wind loading, now is the time to do it.

Use a Checklist. Roofs rarely fail all at once. Attention should be paid to

each of the components. All good inspections should be performed with a checklist, which prompts consideration of areas of concern. The checklist should allow you to rate the condition of the different components of the roof system. Every roof is different and special conditions always come into consideration, but the following things should be addressed:

- ✓ Exterior and interior walls for cracks and moisture stains.
- ✓ Roof condition for debris, drainage surface deterioration, splits, blistering, punctures, etc.
- ✓ Make sure that there are no ponding on the roof.
- ✓ Remove debris that could cause a blockage of the drainage system or puncture the roof surface.
- ✓ Look for obvious signs of blistering and splitting of the membrane which indicates that the roof is separating from the structure.
- ✓ Flashing is protective sheet metal used where direction changes on a roof. If pulled loose, it can indicate that the roof material is separating from itself and may allow water and insects to infiltrate your roof.
- ✓ Caulking separation between counter-flashing and walls indicates wear and can allow water and insects into the roof system.
- ✓ Coping cap is the piece of metal that sits on top of the parapet wall which stands above a flat roof system. It can become separated and allow water intrusion.
- ✓ Wall cracks.
- ✓ Gravel stop splits and securement. Gravel stop is the material that holds gravel in place and the securement is where the gravel stop overlaps and is held down.
- ✓ Monitor foot traffic and debris left by contractors.
- ✓ Cracks or splits in expansion joints. Look for a rubber bumper that allows expansion and contraction, that's the expansion joint.
- ✓ Pitch-pan shrinkages. A pitch pan is the metal box (usually square or circular) that surrounds any roof penetration. The sealant in the pan can shrink over time and needs to be maintained periodically.
- ✓ Wind hazards and weaknesses. Gabled roofs and high roofs are particularly vulnerable and should be braced.

Use preventive maintenance. This is the action taken as a result of the

inspection process. It is very important that you select a contractor who specializes in this area. Preventive maintenance is a specialty of the roofing trade and very different from conventional roof installation contracting. Hire only a roof technician properly trained in roof system diagnosis and corrective procedures.

Providing the contractor with all historical information including the specific roof system, warranties, inspection reports, and a list of previous problems and corrective action(s) taken will help ensure that the corrective process is performed properly. Warranties can be voided by manufacturers if dissimilar materials are used to correct a problem or the wrong action is taken which only compounds the problem.

While most roofs will be in decent condition, almost all will require minor repairs and some will require significant repairs. If your roof is leaking, serious damage has already been done. Your roof insulation, if exposed to a leak will lose most of its effectiveness and your decking system could become questionable if exposed over a significant period of time. Water penetrating the roof can lead to significant mold problems, so it is critical that you take every measure to avoid a problem before it starts.

If it's been a while since the last roof inspection, anticipate a significant charge to bring your roof up to a manageable level. Once you've established a routine inspection and maintenance pattern, expect costs to range from \$0.01 to \$0.10 per square foot per inspection. Considering the cost to re-roof a building can run from \$5 to \$20 per square foot, extending the service life of your current roof through proper maintenance is worthwhile.

The best strategy is an established relationship with a qualified roofer. The National Roofing Contractors Association provides a wide range of information and services to help homeowners and building owners make informed decisions about replacing and maintaining their roof systems, including how to hire a professional roofer. You can find out more by visiting www.NRCA.net.

By Best Roofing 

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Smoke Free Forecast

“My home is my castle.” Maybe, maybe not, if you’re a resident in a homeowner association. After pushing through smoking bans in bars and restaurants, anti-smoking advocates have begun to set their sights on another target: HOAs.

These advocates have been predicting that it is only a matter of time before common wall HOAs bar smoking entirely, not just in common areas. In fact, a Colorado court upheld an amendment to the governing documents of a condominium prohibiting smoking anywhere within the boundaries of the condominium property, including the individual condominium units.

Two condominium owners had complained that smoke seeped into their units from a unit occupied by heavy smokers. When the homeowner association unsuccessfully tried caulking, installing foam insulation, and altering the return air ducts to prevent smoke from entering the other units, three of the four unit owners approved an amendment prohibiting smoking anywhere on the condominium property.

The smokers sued, claiming that the HOA had acted capriciously, that it lacked the authority to prohibit legal activities within residential units and that it had not proven that secondhand smoke, rather than simply the smell of smoke, was actually seeping in the other units. They also claimed that the smoking ban violated the owner’s right to smoke within the confines of his private unit.

The trial judge rejected all of the smokers’ arguments, ruling that:

1. The homeowner association’s efforts to mitigate the smoke before it enacted the amendment demonstrated that it had not acted “capriciously”;
2. The HOA properly based its authority to ban smoking on the governing documents’ anti-nuisance provision, which allows prohibiting any practice that interferes with the

peaceful possession and proper use of the property by its resident; and

2. Secondhand smoke qualifies as a nuisance and that whether there was actual smoke or simply a smoke smell is irrelevant.

As for the unit owners’ right to smoke in their own unit, the court offered that smoking is not a right protected by the Constitution. Furthermore, governmental jurisdictions have adopted laws designed to protect citizens from the well documented health effects of secondhand smoke in indoor areas.

It should be noted that the significance of the court decision is somewhat limited by the facts in this matter since the condominium was small and the building was older and, therefore, more susceptible to smoke seepage. Also, the unit owners had been complaining about the secondhand smoke for several years, and the homeowner association had undertaken extensive and unsuccessful efforts to address the problem before enacting the smoking ban.

However, given the growing number of people living in HOAs and the increasing willingness of nonsmokers to assert their right not to breathe secondhand smoke, there will almost certainly be more smoking disputes among members in the future. In fact, management companies and health activists recognize that there is a growing voluntary movement by HOAs to ban smoking which they predict will result in tens of thousands of units becoming smoke-free within years to come.

Will this decision and judicial reasoning open the door for other HOAs to enact similar smoking bans? The Colorado judge noted that there is plenty of medical evidence proving that secondhand smoke poses a health risk for nonsmokers, which is underscored by the adoption of laws in many states banning or restricting smoking in public places. In this lawsuit, the judge saw that the balance between the rights of smokers to indulge in smoking within the confines of their private homes and the rights of nonsmokers not to be harmed by secondhand smoke had tipped the scales of justice in the favor of the rights of nonsmokers.

Not only will future cases continue to challenge HOA smoking bans, but HOAs that refuse to ban or restrict

smoking may also face lawsuits by members who allege that they have been harmed by secondhand smoke and claim that the HOA has liability for the damages they have suffered.

The balancing act won’t be easy, but in the interest of resolving divisive conflicts and preserving a sense of community among residents, it will be essential. Board members should watch all of these comprehensive governmental smoking ban initiatives to see how far they go in requiring smoke-free condominium units.

By Daniel H. Craven 🌲

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