



# The Regenesis Report



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

**Regenesis** believes that the goal of every homeowner association board should be to promote harmony by effective planning, communication and compassion.

**The Regenesis Report** provides resources and management tools for just that purpose. Every month, articles of common interest to homeowner associations nationwide are offered along with innovative strategies for addressing common problems.

Managing an HOA can be a lonely and frustrating task. Take heart. Help is on the way.



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## HOA Investment Policy

Investing reserve funds prudently produces enormous fruit to the homeowner association. The difference in interest yield over 30 years can amount to tens or hundreds of thousands of dollars. Interest earnings reduce the amount of contributions required of the HOA members. So, it behooves the board to establish and closely monitor a good reserve fund investment policy. Here is a sample which can be adapted to your use:

We, the undersigned, members of the board of directors of [name of homeowner association], a corporation organized under the [applicable state statute] do approve the following policy:

WHEREAS the board of directors desires to manage reserve funds as good stewards,

BE IT RESOLVED THAT the following reserve funds investment policy be adopted:

### Goals & Objectives

The reserve assets shall be invested to achieve the these objectives:

1. Not risk loss of principal;
2. Ensure that adequate liquid funds will be available for coming year reserve needs;
3. Achieve highest long-term investment performance.

### Investment Strategy:

#### A. Liquid Funds

On a annual basis, the board will review the reserve schedule for the upcoming year to determine anticipated funds required for expected expenditures plus a twenty percent cushion. This amount constitutes the "Liquid Funds".

#### B. Non-Liquid Funds

Funds over and above the Liquid Funds will be invested as follows:

**Laddering Strategy.** Invest in federally insured accounts and/or securities that have

maturities of three months or more. If funds permit, buy securities with varying maturity dates (laddering) rather than invest a lump sum in one security with one maturity date. Laddering allows securities to mature at various times so some funds come available periodically without invoking early termination penalties. If interest yields are relatively low, board will invest for shorter terms with the anticipation that rates will rise in coming months. If rates are relatively high, board will invest for longer terms to take advantage of the higher yield.

**New Funds.** Liquid portion of the reserve assets grow from interest earnings as well as from reserve contributions and become investable if they are in excess of the Liquid Funds. These funds can be combined with proceeds from laddered securities as they mature or purchase new laddered securities.

### Approved FDIC Investment Classes

- ~ Savings accounts
- ~ Money market accounts
- ~ Certificates of deposit in FDIC-insured financial institutions with no more than \$250,000 in any such institution, unless additional private deposit insurance is provided by the bank.
- ~ Treasury bills, notes or bonds.

### Review & Control

- ~ All investments will be purchased in the name of the homeowner association.
- ~ The signatures of the President and/or Treasurer are required for withdrawals or transfers of reserve funds.
- ~ The board will review regular financial statements and make adjustments as needed to ensure Goals & Objectives are being met.

Approved [date] by the Board of Directors

Investing reserves wisely is an extremely important financial stewardship task. Formalize a Reserve Funds Investment Policy today and reap the financial harvest. ☀

## Ask the HOA Expert

**Q** Are the common areas of our HOA governed by the same rules and regulations that the members are governed by? Example: If the rules state that a homeowner cannot install a fence on their property higher than four feet and that fence can only be constructed of wood, do the fences around common areas have to comply with these same guidelines?

**A** Common area fence standards can and often are different since there are different considerations than between neighbor fences. For example, common area boundary fences are often taller and more durable (like chainlink) which would not pass the curb appeal test.

**Q** Can the board enact rules or can it only enforce rules that are outlined in the governing documents?

**A** The board can enact a rule by virtue of its authority as long as it does not contradict specific language in the governing documents. This grants the board a considerable power which it should use prudently. Since the world is awash with rules and regulations already, a basic guideline for HOA rule making is "fewer is better". The board might even consider rescinding a few that prior boards put into effect, especially those that deal with issues that are already enforced by local ordinances. If you can get the police to enforce a rule, why would the HOA get in the middle? Only provide rules that uniquely apply to the HOA.

**Q** Our bylaws were updated several years ago but were never recorded. Are those updated but not recorded bylaws enforceable?

**A** Generally, only recorded bylaws are enforceable. However, if the unrecorded bylaws reflect state statute, they may be enforceable. Get an opinion from a qualified attorney in your state based on your particular situation.

**Q** I rent out a house in an HOA. My renter has sent me numerous emails about the neighbors letting their dogs run through his yard. I have spoken with these residents yet the complaints continue. How would you handle this issue going forward if you were the manager?

**A** You have done the right thing by communicating with the neighbors first. However, since they did not respond appropriately, you should turn the matter over to the board for further action. Provide the board with the written communications, dates, etc.

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**Q** Our current policy excludes wind damage and a recent tornado took out many of our large trees. Our board is considering purchasing wind damage insurance for our trees and shrubs.

**A** Whether you buy wind damage insurance or not is a matter of cost. If it's cheap, buy it. But if the need for it is infrequent, consider establishing a five year reserve fund for Tree Replacement based on the last five years' expense. If you don't spend it, it's money in the bank.

**Q** We are considering hiring a professional HOA management company. How are management fees determined? Is it similar to rental management?

**A** HOA management fees are generally expressed as a flat monthly fee based on a charge "per door". The per door fee cost varies a lot based on the kind of services the management company is providing and which company employee is needed to execute a particular service (manager, bookkeeper, maintenance, office staff)

The management company generally estimates the average time per month it will take to attend meetings, generate financial statements, respond to calls and correspondence, enforce rules, inspect the property and other routine services the board contracts for. There is usually additional charges for special tasks like providing information to lenders, overseeing insurance claims, preparing for litigation, etc.

Since identifying what is and what is not included in a Management Agreement is critical to avoid misunderstandings, overcharges by the management company and unrealistic expectations from the board, having a well written and comprehensive Management Agreement is essential. Such is available in a customizable form at [www.Regenesis.net](http://www.Regenesis.net) in the Manager Issues section.

**Q** What are the duties of a board appointed Nominating Committee?

**A** The Nominating Committee is appointed to identify qualified candidates for election. The committee is usually charged with these tasks:

1. To verify that candidates are in good standing with the HOA (no outstanding delinquencies or rule violations)
2. To inquire whether a candidate has special training or expertise (accounting, engineering, project management) which would be useful to the director position.
3. To verify that the candidate is aware of the meeting schedule and able to attend all board meetings.
4. To provide candidates an overview of the director duties.

While the Nominating Committee may recommend certain candidates, all members in good standing are entitled to run for the board and should be included in all meeting notices, proxies and ballots.



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**Q** I live in an HOA that has rental restrictions. I recently got transferred and am unable to sell my unit because of market conditions. I need to rent it but am afraid of violating the rules.

**A** You are not alone in your predicament. I suggest that you request an exception to the rental restriction due to the circumstances you describe for a period of, say, one year, to allow time for the real estate market to recover. If circumstances have not changed in a year, ask for another year extension. By requesting a temporary exception, you aren't opening the door to everyone else unless they are caught in the same bind. The board could say no but if your inability to sell or rent causes you to lose the unit to foreclosure, the HOA will likely lose fee revenue. It's in the best interest of the board to compromise when circumstances dictate. 🗺️

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### **Contracting Contractors**

Winter is the time that summer and fall renovation work should be contracted so that it gets on the contractor's schedule.

Anyone who does or advertises doing repairs, remodeling, alterations or new construction is usually required to be registered with the state contractor licensing board. This includes roofing, siding, painting, carpentry, concrete, appliance repair, heating and air conditioning, home inspections, tree service, plumbing, electrical and most other construction and repair services. These state agencies often offer free dispute resolution service for those who have problems with a registered contractor for up to a year after the work has been substantially completed.

States often license landscape contractors as well. Landscapers plan

and install irrigations systems, lawns, shrubs, vines, tree and other decorative vegetation. They grade and prepare land, design and install drainage facilities, build fences, decks, walkways, retaining walls and fountains, apply chemicals for pest control and fertilizing.

#### **How to select a contractor:**

🗺️ Hire only registered or licensed contractors. Neither registering and licensing ensure competence but guarantee that the contractor has a surety bond and liability insurance which offer financial protection if problems develop later.

🗺️ Ask for and call references.

🗺️ Have a detailed set of specifications. The contractor can assist with developing the specifications but make sure the HOA contracts for what it needs, not just what the contractor proposes to provide.

🗺️ Get three written bids using these same specifications for all. Don't automatically accept the lowest bid. Consider the reputation of the contractor. Paying more can be worth it.

🗺️ Use a written contract and put *everything*, including changes to the original contract, in writing.

Whether you are contracting for a renovation project or for a long term service contract, the principles are the same. Do your homework, check your references and have clear specifications to obtain the best contractor you can afford. 🗺️

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### **Keeping Appearances**

There seems to be a tendency for common wall homeowner associations to acquire over time owner touches like custom mailboxes, light fixtures, address numbers, pink flamingos, bird

feeders and a variety of other questionable designer touches. What is a reasonable approach for the HOA to follow when it comes to appearance standards and while should there be standards at all?

Exterior appearance directly impacts property market value. A great curb appeal can add value while bad curb appeal can detract from value. It's left up to the board to set reasonable standards. Often such standards are absent from the governing documents. If this is the case in your HOA, it may be time to develop an exterior appearance policy which includes:

1. A statement that explains that standards are needed to protect and enhance property values.
2. Allow residents to place plants and flowers on patios, decks and entries but not in the common area. They rarely fit with the overall landscape design and are difficult for the landscaper to maintain.
3. Make the common area a No Man's Land as far as personal decorations.
4. Uniform appearance of the common wall units maximizes market value. Approve standards for add-on storm doors, patio roof covers and the like which include brand, model and color. Old installations can be grandfathered with the understanding that replacements must conform to the standard.
5. Forbid personal storage sheds.
6. The HOA should be responsible for replacing mailboxes, address numbers and exterior light fixtures as needed to keep them uniform and good repair.

Form a committee to draft a policy and ask for member input. Without it, implementation and enforcement will be an uphill battle. When complete, deliver a written copy to all members and allow a reasonable feedback time. Next, schedule a special meeting where the policy will be discussed and revised according to input. Next, include the final draft as an agenda item for the next official board meeting. Once

approved, make sure it is clearly noted in the meeting minutes. Finally, deliver an “Approved” copy of the policy to all members.

As far as compliance is concerned, the board or compliance committee should inspect the property monthly. The sooner violators are notified, the easier it is to get compliance. The tone of the notice should be decisive but not authoritarian. Even violation notices can be an opportunity to forge a better community. Keeping appearances at the HOA is worth doing. 🏡

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### **Qualifying a Reserve Study Provider**

A reserve study is one of the most indispensable planning tools an HOA can have. The best reserve studies are put together by trained industry professionals. There are only a handful of qualified reserve study providers *in the world*. How could this be true?

HOA reserve studies are a relatively new phenomena. The need for reserve studies became painfully apparent in the 1980s when condominiums built in the 1960s began to have widespread failure of common elements like roofing, fences, decks, paving, siding and other long life components.

In the 1960s, developers marketed condos as “carefree living” and promised buyers that maintenance and repairs would be taken care of by the association of unit owners. All individual unit owners had to do was contribute money to a pot and the rest was “handled”. This all sounded too good to be true and was. Most of those developers failed to provide a long range plan (reserve study) and a funding plan to pay for very predictable and expensive future events. Not only that, the budget provided to the initial board was often woefully inadequate to pay for even routine day-to-day maintenance. It was all a setup to fail

of nightmarish proportions.

To make matters worse, some of these developers wrote budget restrictions in the governing documents that prevented the board from increasing the budget without approval of a large block of members (sometimes 100% of them). These boards were effectively prevented from raising the money they needed to maintain the HOA and member assets. They started in a hole which just got deeper with passing years.

By the 1980s, natural deterioration had caused failure of many building and grounds components. It became apparent in states with large numbers of HOAs like Florida and California that better planning and requirements were needed to avoid this kind of predictable failure. In those states, legislation was adopted that required reserve planning. Thus, the concept was born and the need for qualified reserve study providers to accomplish the work.

Unfortunately, there was no formal training available for reserve study providers. Those that engaged in it had varying types of backgrounds like accounting, engineering, building inspection, construction estimating or HOA management. Some had no related experience whatsoever. And no state licensing was required. This is still largely true today. Only Nevada has a requirement for reserve study providers (to get a permit).

So what should a homeowner association board or manager look for in a good reserve study provider?

**Years of Experience.** Reserve study providers learn their trade on the job. While having related education is helpful, actual experience doing the work is more important...the longer the better. Reserve study providers make judgments on designs and materials which have useful lives of 30 years or more. The longer the provider has been actually making these judgment calls, the more accurate they are. It's the same reason you shouldn't hire a brand new roofing company to put on a roof. This is intended to be a very long relationship. Don't hire a company just

because they want your business. Hire the company based on demonstrated experience.

**Understands HOA Politics.** As the name suggests, homeowner associations represent a collection of homes, not investment property. As such, the individual owners take a keen interest in how their home is maintained. So, while the board is authorized to make decisions, owners often weigh in on those decisions and watch closely how things are handled.

**Understands HOA Operations.** Doing repairs on owner occupied buildings creates additional challenges and costs. Painting buildings and sealcoating parking lots takes careful advanced planning and coordination. Just forget to warn residents in advance and watch the you-know-what hit the fan.

**Ability to Communicate Clearly.** The reserve study itself is a compilation of numbers, percentage rates, dollar amounts and descriptions. If the information is not organized in a user friendly format, the board and members won't understand or use it. When soliciting proposals, always get a sample reserve study to make sure you “get it”.

**Report Complies with Governing Documents.** The HOA governing documents are the guiding light for what goes into a reserve study. Many boards are surprised to discover their HOA has been maintaining things it shouldn't and neglecting to repair things it should.

**Report Complies with State Statute.** A growing number of states have specific legislation that triggers requirements in the reserve study over and above what is required in the governing documents.

**Includes Additional Reserve Components.** The reserve study can include a number of items that aren't required by statute or the governing documents. It can be used to add items or fund special items, such as:

**1. Insurance Deductible.** Lenders are

now required to verify an insurance reserve equal to the HOA policy deductible.

**2. Contingency.** Since the future is uncertain, adding a contingency fund of, say, \$10,000 to address this often makes sense.

**3. Wish List.** Additional items that don't currently exist can be added to the reserve study to build funding over a period of years.

**Main Focus of Business.** Doing reserve studies should be the prime focus of a qualified reserve study provider. If it's just one of many services offered, you're not likely to get the kind of quality information you need.

**Long List of Satisfied Customers.** This goes with the experience thing. A qualified provider should be able to demonstrate a long list of satisfied clients with comparable properties to yours.

**Credentials to Prove Experience.** This is a big one. Since no formal education is available to train reserve study providers, experience and credentials are paramount. When it comes to credentials, the **Association of Professional Reserve Analysts** offers the **Professional Reserve Analyst (PRA)™** credential to members who have a minimum of three years performing reserve studies full time and a work product that reflects all components of a well executed reserve study. For a list of PRA members, go to [www.apra-usa.com](http://www.apra-usa.com)

The implications of a badly done reserve study are long lasting. Don't be fooled by low bids from inexperienced companies. Only consider proposals from those that have the credentials and experience to do this work. 🗺️

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## Areas of Responsibility

Understanding the scope of homeowner association insurance coverages is basic to protecting the vital interests of the owners. Do you understand what the HOA's duties are when a fire, windstorm or burst pipe damages the common elements or unit interiors?

The HOA's insurance duties are addressed in the governing documents. The insurance company's duties are based on the wording of the policy. The two documents often contradict. Surprisingly, the insurance policy often pays for the repairs that aren't even the HOA's responsibility. Are there reasons why such broad coverage may not be in the homeowner association's best interest? If an owner negligently or carelessly causes a loss (like a kitchen fire or bathroom flood), is it fair that the repairs be done under the HOA's policy?

Traditionally, homeowner association insurance policies have fallen into three different categories:

1. The narrowest is called "bare walls" and covers little of the owner's fixtures and finishes.
2. The most common is the broader coverage known as "single entity". This type expands coverage to include standard fixtures and finishes provided by the builder.
3. The broadest is referred to as "all-in" which includes coverages for owner installed upgrades such as cabinets, lighting and plumbing fixtures.

Many HOA insurance policies are the "all-in" type which creates a dilemma. While the HOA could cover many owner claims, it's unwise to do so. The HOA's policy is somewhat like an auto policy in that multiple claims may increase future premiums or cause the policy to be cancelled. So, many HOA governing documents require the owners to insure their own interior finishes and fixtures and the HOA's insurance only comes into play if there is multiple unit damage due to, say, a fire. This spreads the risk around and keeps the homeowner association insurance viable.

Since the HOA and owners each have distinct repair and insurance responsibilities, it's very important that those responsibilities be clearly delineated. Simply defining those responsibilities as Inside=Owner and Outside=HOA won't cut it because there are exceptions. And at the point where Inside and Outside meet, what is the dividing line?

A document to define this has been developed called the "Maintenance & Insurance Areas of Responsibility". It lists grounds and building components like the Roof, Gutters & Downspouts, Plumbing-Interior, Plumbing-Exterior, etc. and assigns responsibility either to Owner or HOA.

The Areas of Responsibility not only eliminates most disputes, it advises both HOA and owner insurance agents what kind of coverage is necessary by eliminating gray areas. It also helps the board and manager to perform consistent maintenance because there is a clear road map. This document is one of the building blocks of community harmony. Don't wait for the next insurance claim to come crashing or burning in. Establish your own policy and be prepared.

*For a sample "Maintenance & Insurance Areas of Responsibility" policy, see [www.Regenesis.net](http://www.Regenesis.net) Policy Samples section 🗺️*

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## Trees in Good Standing

The reason for an HOA tree policy is to preserve the streetscape and prevent clear-cutting. The board can get requests from time to time asking permission to cut trees. Sometimes cutting is approved but if it's a large tree and there is no disease or damage, usually not. However, the board needs to treat each removal request based on its merits. Here are several good

reasons for removal:

1. There is a fire hazard. Trees should generally be located at least 30 feet from the building, especially if they are flammable like pine trees. This is especially true in areas that are prone to wild fires due to drought and windy conditions. Keeping trees 30 feet away helps create a defensible fire zone.

2. Trees create leaf debris that clogs gutters and downspouts. Certain kinds of trees create year round leaf debris that substantially increases gutter cleaning and blockages. Removing such trees in close proximity to structures makes good sense.

3. Trees that overshadow and inhibit the landscaping. Developers often plant many trees because they are small and more of them makes a better marketing impact. But when many small trees grow large, they can turn the common area into a dark and foreboding place where flowers, bushes and plants won't grow. Thinning out selected trees is often recommended for the health of the landscaping *and* trees. Ornamental trees need room to flourish.

4. Leaning Trees. Under windy and wet conditions, leaning trees are more likely to fall. It usually best to remove them before they do.

5. Trees that are diseased. Certain species are subject to infestation that will eventually kill them. It's best to remove them early to slow the spread of the blight.

When confronted with a specific request that goes against the grain (tree pun), it's prudent to get a licensed arborist to review the trees in question. If the arborist believes they are a danger or should be removed, remove them. Otherwise, no. The board is not responsible for Acts of God, only for handling business in a prudent manner. Use experts to your advantage.🌲

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## History of Rhetoric

Since Homer in the 8th century BC, wisdom (sophos) was prized. The Sophists were originally itinerant poets and teachers who spread learning and culture wherever they found those ready to pay. Being, or at least appearing, wise, the Sophists advised on governance.

Over time, the Sophists focused more on eloquent speech and rhetoric. A rhetorical question is one which requires no answer, implying the wisdom contained within it. This brought them up against thinkers like Socrates, who did not charge fees and Plato, who portrayed them as using fallacious reasoning concealed in decorated language to deceive and gain power and money. Aristotle helped separate out philosophy as a separate school, leaving sophism as largely about the techniques of rhetoric.

Cicero developed the Five Canons of Rhetoric which was influential for centuries:

1. Invention: Finding ways to persuade.
2. Arrangement: Putting together the structure of a coherent argument.
3. Style: Presenting the argument to stir the emotions.
4. Memory: Speaking without having to prepare or memorize a speech.
5. Delivery: Making effective use of voice, gesture, etc.

From the Greek "rhetor", someone who addressed juries or leaders who address global audiences, rhetoric is a indeed a powerful tool. It became a mainstay of priests, lawyers, politicians, writers and others wanting to persuade.

Eloquent persuasion became a mainstay of the civilized intellectual as well as the courtier's preferred mode of speech. From the Romans to the Middle Ages, rhetoric was taught as a liberal art alongside logic and grammar.

Sophism now means the use of deceptive argument, pulling on emotional strings rather than using

rational logic, appearing smart rather than being smart. Rhetoric now implies the use of fancy language to persuade. When politicians and others use it as a cloaking mechanism for unpopular or vacuous speech, then others will throw stones not only at the person but also the method.

From [www.ChangingMinds.org](http://www.ChangingMinds.org) 🌲

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Chapter 12: Why your wife doesn't care that you birdied the 5<sup>th</sup> hole.

Chapter 13: How to let a foursome play through your twosome.

Chapter 14: How to relax when you are hitting three off the tee.

Chapter 15: When to suggest major swing corrections to your opponent.

Chapter 16: God and the meaning of the birdie-to-bogey putt.🌲

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