Rights of residents for providing email addresses

Q: Does the president of a condominium association have the rights to the email addresses of all its residents for emailing information to the residents? We do not have a community newsletter and the only one who I was told has the rights to all email addresses is the property manager, who is a paid employee of the larger board. *E.S., Naples*

A: An association cannot mandate that owners provide email addresses to it. However, many owners do voluntarily provide email addresses. Once provided, the email addresses become official records of the association. However, unless an owner has provided their email address to the association and expressly indicated that it is to be used for official communication, the email address is not available to owners who request to obtain it. In most cases, owner email addresses kept by the association are used for what is commonly called casual communication such as newsletters, updates etc., but traditional mail is used for official communication such as meeting notices, ballots and proxies. Who can utilize the email addresses and for what purpose is a decision of the board not the president or any single director. So, unless the board has authorized the president to send communication to the owners via email, he or she does not have any right to do so using email addresses that were given to the association.

Q: My homeowners association (HOA's) board of directors adopted a rule that states at a board of director meeting that the meeting can be recorded only if the person recording announced that they are going to record and that the videos cannot be published or uploaded to social media websites after recording. Is it legal to prohibit uploading of the video to a social media website like YouTube, Nextdoor, etc. and under what authority can this be enforced? *J.M.D., Naples*

A: Owners have the right to video and tape record board meetings and members meetings. However, the board can adopt reasonable rules regarding how this can be done. A rule that requires a person to announce they are recording before they start is reasonable and enforceable. Whether or not the board can enforce a rule prohibiting the uploading of the video to social media is much less clear. This is a cutting-edge issue, in this day and age, and pits free speech rights against a person's right to privacy. There is no law that presently prohibits what a person can do with such a recording. At this point, absent a court decision or statutory change I do not believe the board can enforce such a rule.

Q: Our condominium units contain lanais. Originally the lanais were screened and had no floor covering above the concrete slab. Over the years, owners have been allowed to improve their lanai by enclosing it and tiling it. Now the association has to perform work on the lanais that will require the tile to be removed and the glass enclosures as well. Who has to pay for the removal and replacement of these items? *Z.C., Naples*

A: Your question raises the issue of incidental damage caused to a unit when the association has to remove owner installed improvements in order to perform necessary maintenance. The typical rule is that if the association causes incidental damage to an original improvement installed by the developer or a like kind replacement, the association must pay for the removal and replacement of the item. A classic example would be if the developer-installed kitchen cabinets must be removed in order to perform maintenance to the wall behind the cabinets, the association would pay for the cabinets. Conversely, arbitration decisions have held that when the association must remove owner

installed improvements, as opposed to original developer construction or like kind replacements of developer construction, in order to perform repairs, the unit owner is responsible for the cost of removal and reinstallation of the improvements. The general concept being that when an owner makes an improvement to their unit or limited common element, they accept the risk that the improvement may have to be damaged in order for the association to perform its maintenance obligations. So, in your case since the owners installed the glass enclosures and tile, the association would not have to pay for the removal or replacement. Of course, all of the foregoing is also dependent on the particular Declaration of Condominium and would not apply in cases where the association's work is being performed due to an insurable casualty loss such as a fire or hurricane.

Q: Our board proposed an amendment to the governing documents to be voted on at a members meeting. At the meeting there were not enough favorable votes to pass the amendment. The board had a member make a motion to continue the meeting to a new date. In the meantime, the board solicited more votes and the when the meeting was reconvened is was announced the amendment passed. Is this legal? *A.M., Naples*

A: Generally, yes if the motion to continue the meeting and reconvene it was properly made, seconded and approved by a majority of the members at the meeting it was very likely legal. Proxies used in condominiums, cooperatives and HOA's are good for up to 90 days from the date of the original meeting. The applicable statutes also allow that business that can be transacted at a meeting can also be transacted at a properly reconvened meeting. The exception would be an election of directors. Robert's Rules of Order provides a method of reconvening a meeting for this purpose. The Division of Condominiums Arbitration cases have upheld votes obtained in this fashion as being valid. However, it is important to make the motion properly. If the "question has been" called and all voting closed and the votes are announced as being insufficient, you cannot make the motion to reconvene and solicit more votes. The motion must be made before the question is called, voting is closed and the results announced.

Q: Our board is attending a pre-suit mediation with a homeowner that is threatening to sue the association. We have asked if as owners we can attend the mediation. The board said we cannot attend the mediation. Is this true? *A.C., Marco Island*

A: Yes, the only people legally allowed to attend a formal pre-suit mediation are the parties of the mediation. In this case, that would be the board of directors on behalf of the association and the homeowners bringing the action. Legal counsel for both parties and the association manager would also be allowed to attend but other non-party homeowners would not be allowed to attend. However, if the case is settled, the written settlement agreement would be an official record of the association and all owners would be allowed to obtain a copy of it.