



## When can the condominium administrator use a substitute?

**The substitute of the condominium administrator: powers of representation and profiles of responsibility.**

Avv. Marcella Ferrari - Court of Savona 01/08/2019

### What happens if the administrator substitute proves negligent?

#### Obligations of the administrator in the summer period.

As you know, the administrator is required to take care of the management of the Condominium and the execution of the assembly resolutions.

He has competences in the matter of ordinary maintenance and conservation of common goods; likewise, it must also be concerned with extraordinary maintenance, in case of need and urgency.

From the point of view of the contractual framework, it is important to remember that the director is not an employee of the Condominium, but a freelancer who has concluded a mandate contract [1] with the members of the building.

He has the legal obligation to behave diligently, therefore, **in the event of absence due to the holiday period, he is obliged to provide his own address or a possible substitute to be contacted in case of need.**

The director who is absent without fulfilling this obligation carries out a negligent conduct, such as to entail the termination of the contract of mandate for non-fulfillment - that is, its revocation - and, in the most serious cases, compensation for damage.

#### The rules on the appointment of the administrator substitute.

The rules established by the art. Apply to the relationship between the administrator and the Condominium. 1129 of the civil code on the subject of "appointment, revocation and obligations".

In particular, the art. 1129 c. 6 cc implicitly admits the faculty of nominating the substitute: «in the absence of the administrator, on the place of access to the condominium or of greater common use, accessible also to third parties, the indication of the generality and the addresses, also telephone numbers, **of the person who performs functions similar to those of the administrator.**

The same article, in paragraph 15, establishes that, although not regulated, reference is made to the mandate rules.

Given the above, the provisions that are in relief, in order to assess the possibility of appointing a substitute administrator, are:

- the aforementioned art. 1129 c. 6 c.c .;
- and the art. 1717 of the Civil Code regarding the mandate contract.

The law on the mandate contract allows the appointment of a substitute, in fact, the agent is not prohibited from making use of a vicar.



Nevertheless, **a ban in this sense can be contained in the condominium regulation or in the resolution of appointment of the administrator.** Article. 1717 of the Civil Code identifies two cases: the appointment of the authorized substitute and not authorized by the principal, with different consequences. Let's analyze them together.

## 1) The substitute of the administrator not authorized by the Condominium.

As we have seen, the administrator is linked to the condominium structure by the contractual mandate, in which:

- the Condominium is the **principal**;
- the administrator is the authorized **representative**,
- any substitute is a **sub-agent**.

That said, the art. 1717 c. 1 cc provides that the agent (ie the administrator) is responsible for the work of the person who appointed him as a substitute (ie the sub-agent), if:

1. has not been authorized for replacement;
2. the aforementioned replacement is not necessary.

Why should the administrator be authorized by the Condominium?

The relationship between condominium and administrator is based on trust, that is on the particular qualities of the chosen person, for this reason, in order to avoid responsibility, the administrator must obtain the prior authorization; if he does not obtain it, he is responsible for the work of the person who appointed him in his place.

Therefore, «pursuant to art. 1717, c. 1 of the Civil Code, the director who in the execution of this mandate activity replaces others to himself without **being authorized to do so by virtue of a specific resolution of the condominium meeting, or without this being required by the nature of the assignment, is liable for work of the replaced person**, to nothing indicating that the replacement is in accordance with previous practices known to the condominiums, since it is a circumstance that in itself is not valid to express the will of the condominium "(Cass. 8339/2014).

## 2) The substitute of the administrator authorized by the Condominium.

In the event that the Condominium (principal) has authorized the replacement, without indicating the name of the alternate, the administrator (authorized representative) responds only when he is at fault in the choice (art. 1717 c. 2 of the Civil Code).

This is the so-called "culpa in eligendo", by virtue of which, for example, the administrator is responsible for having chosen a subject with inadequate skills to carry out the requested work.

In this regard, it seems appropriate that the administrator substitute has the same requirements that the law requires for the administrator himself (art. 71 bis disp. Att. Cc) and, therefore, the enjoyment of civil rights, the absence of convictions for crimes against the public administration, the administration of justice, the public faith, the patrimony or for any other non-culpable crime for which the law imposes the penalty of imprisonment of no less than two years at the minimum and, at most, five years; the absence of prevention measures that have become definitive; the absence of an interdiction or disqualification provision and so on.

Outside of the responsibility for "culpa in eligendo", the administrator, who has received the prior placet from the condominium team, is not responsible for the activity of his deputy.

**The substitute can also be indicated in the meeting resolution of the director**; in this way, since the choice of the name is made directly by the condominiums, the administrator is exempt from all responsibility.

Naturally the appointment of a substitute must be of a temporary nature, for example, in the case of holidays or illness of the administrator.

A more lasting replacement would result in the violation of the rules of the mandate and of the trust relationship established between the administrator and the condominiums.

In summary, the nomination of the substitute may be authorized by the Condominium:

- if the substitute is chosen by the administrator, he responds within the limits of the "culpa in eligendo";
- if the replacement is chosen by the shareholders' meeting, the director does not reply.

## **Substitute activity and responsibility.**

In the event that the replacement took place without the consent of the condominium, the activity of the sub-agent - or substitute - may be disregarded by the principal (ie the condominiums).

However, this happens **only in the event that the work of the substitute is not useful**; on the other hand, if the Condominium has benefited from its activity, it cannot deny it and, indeed, is obliged to compensate it.

Precisely in terms of the condominium, the Supreme Court stated that the director is responsible for the work carried out by the sub-agent, if he appointed him without prior authorization from the shareholders' meeting, even in the event that the appointment of the deputy is part of the condominium custom.

In fact, «[...] the condominium's will is formed and manifested through collegial acts with a formal content, **even the authorization to make use of substitutes in the execution of the mandate, like any other authorization, must result from a specific resolution of the condominium meeting**, to nothing indicating that the replacement is in accordance with previous practices known to the condominiums, since it is a circumstance that in itself is not valid to express the will of the condominium (Cass. 8339/2014).

In any case, regardless of the presence (or not) of the prior authorization of the assembly, the administrator (agent) always answers the instructions he has given to the substitute (sub-agent).

In other words, if the deputy has limited himself to slavishly carrying out the administrator's instructions, he does not respond, since he covers the role of a mere executor (Article 1717, paragraph 3 of the Civil Code).

## **Conclusions.**

Ultimately, the administrator has the possibility of being temporarily replaced (and not permanently) by a deputy, without prejudice to any prohibition contained in the regulation or established by a meeting resolution. Article. 1717 c. 4 cc provides that the Condominium (principal) can act directly against the replaced person (sub-agent) by the administrator (authorized representative). This is a direct action that can be performed by condominiums against the alternate. Finally, the administrator who has appointed a deputy:

1. is not liable for the work of the substitute, if authorized for replacement by the Condominium;
2. liable for the work of the substitute, even if authorized, only in the case of culpa in eligendo;
3. liable for the work of the substitute, if not authorized for replacement by the Condominium;
4. liable for the work of the substitute in the event of unnecessary replacement

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[1] The administrator is a professional work provider who has concluded a mandate contract with the condominium group (art. 1703 c.c.). This reconstruction is also corroborated by a well-

known pronouncement to the United Sections, which states that "the administrator immediately represents the individual participants, within the limits of the mandate given according to the quotas of each" (Cass. SU 9148/2008). RC. USANO, The new condominium, Naples, Simone, 2015, 257 ff.

Source: condominioweb

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