



Dissent to the condominium lithues

Di Luigi Salciarini - In the condominium it is a general rule that the decisions concerning the management of the building are taken by the assembly by a majority decision, even when it comes to judicial litigation.

But the individual is given the opportunity to escape the empire of the assembly, with the so-called "dissent to disputes" provided by Article 1132 of the Civil Code.

According to this rule "if the assembly of condominiums has decided to promote a dispute or to resist an application the dissenting condominium (...) can separate his responsibility for the consequences of the dispute in the case of losing (...)."

But what rules to follow why this dissent is correctly expressed and has full effect?

- 1) From the norm derives the effect of separating the procedural position of the condominium with respect to that of the individual condominiums.
In fact, just as the individual, in some cases, can act autonomously in defense of condominium interests even if the condominium believes not to do so, in the same way this individual has the right not to act or not to respond to the demands of others.
- 2) If, on the one hand, it is undisputed that Article 1132 of the Civil Code applies to "disputes" between the condominium and a "third", it is less secure if it also concerns "internal" disputes: between the condominium and a condòmino (see the recent sentence of the Court of Cassation No. 13885/2014).
- 3) The law concerns only the disputes that have been affected by a resolution of the assembly (sentence of the Court of Cassation No. 2259/1998), with the consequence that the individual condominium does not have the opportunity to express his dissent in relation to the controversy promoted directly by the administrator (without prejudice to the activation of the mechanism referred to in Article 1133 of the Civil Code).
- 4) The dissent must be exercised in writing and communicated to the administrator, a registered letter is sufficient (see the attached facsimile), without the need to respect the formal procedural rules (sentence of the Court of Cassation No. 2967/1978).
The manifestation of dissent must also be considered valid by means of a "verbal" declaration (to be distinguished, however, from the expression of a vote contrary to the resolution which sets the dispute, as clarified by the Court of Naples with the sentence of 8 January 2003).
- 5) The disagreement must be exercised within the peremptory (30-day) term that runs from the moment the condominium became aware of the shareholders' resolution: therefore, from the meeting for the dissenting party, and from the receipt of the minutes for the absentee .
- 6) As for the effects, the "dissenting" is exempted from the expenses attributed to the condominium following the loss; but not from the main object of the application (for example,

from contributing to compensation ordered by the judge).

Consequently, the resolution that imposes on the dissenting a portion / part of the litigation costs incurred by the condominium (last, judgment of the Court of Cassation No. 1485/1996) is invalid. In any case, Article 1132 of the Civil Code does not apply to expenses c.d. "Extrajudicial" (like those for a legal opinion: case clarified by the Court of Florence with the sentence 4149/2006).

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