



GECOSEI

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In the handover, the former administrator must be loyal.

The Supreme Court clarifies the obligations of the new and former administrator.

Giuseppe Bordolli - Scientific Responsible Condominioweb 17/12/2021

On the basis of article 1130 of the civil code, no. 8), the administrator is required to keep all the documentation relating to his own management referable both to the relationship with the condominiums and to the technical-administrative state of the building and the condominium; however, pursuant to art. 1129, paragraph 8, of the Italian Civil Code, the **outgoing administrator**, upon termination of the assignment, is obliged to deliver all the documentation in his possession relating to the condominium and to the individual condominiums.

Moreover, these documents are kept and managed by the administrator only in his capacity as agent but legally they are the exclusive responsibility of the principal condominiums.

In any case, it seems useful to remember that, before the condominium reform law, it was stated that the condominium administrator sets up a private law office similar to the **mandate with representation**, with the consequent applicability, in the relations between the administrator and each of condominiums, of the provisions on the mandate.

The obligation to deliver the documents of the former administrator after the reform of the condominium

In light of the previous considerations, it was pointed out that, pursuant to art. 1713 cc, upon expiry of the mandate the administrator is required to return what he received in the exercise of the mandate on behalf of the condominium (so Civil Cassation, section II, 08/16/2000, n. 10815), even if it is waiting to be **reimbursed any sums advanced on behalf of the condominium**, as there is no correspondence or interdependence between these services, originating from different securities.

After the changes introduced by the condominium reform law, however, the delivery obligation is no longer imposed by art. 1713 cc but by the combined provisions of art. 1129 cc and the subsequent art. 1130, n. 8), cc

However, a question arises: if all the documentation has not been delivered, is the condominium responsible for proof that the former administrator still has the documents of the building and does not intend to deliver them? The answer is contained in the motivation of the very recent sentence of the Supreme Court n. 40134 of 15 December 2021.

In the handover, the former administrator must be fair: the story

A condominium asked the outgoing administrator to deliver some condominium documents. The request was not generic; on the contrary, the **missing documents** had been specifically listed, concerning, by way of example only, the ordinary and extraordinary management, the F24 forms, the banking documentation, the documentation relating to relations with suppliers.

Not obtaining what was requested, the condominiums turned to the Court to request an injunction aimed at obtaining that part of the documentation not delivered by the previous administrator. The Court agreed with the condominium and rejected the opposition.

The Court of Appeal, on the other hand, reformed the sentence of first instance and, as a result, rejected the request and revoked the injunction.



The judges of the second degree noted, first of all, that the condominium's claim had a large group of documents and keys as projected and not instead the delivery of certain things, as required by article 639 of the Italian Civil Code; in relation to the **banking documentation**, they pointed out that the request was not specific and, in any case, the condominium was entitled to request it from the Bank or the Post Office.

According to the Court, therefore, proof of the status of administrator of the condominium was not enough, but proof that the required documents were in the possession of the previous administrator was necessary; in particular, according to the Court, the condominium had not given proof that the former administrator had the availability of the documentation and that he **did not intend to deliver it**.

According to the condominium - which appealed in cassation - the condominium has the burden of proving the legal source of its right and the non-fulfillment of the counterpart, while the previous administrator has the burden of proving the presence of obstacles to the regular fulfillment of his obligation.

The decision of the Supreme Court

The Supreme Court has agreed with the condominiums. As the supreme judges specify, the delivery of the documentation is aimed at neutralizing the damage potentially deriving to the condominium due to the impossibility of reconstructing the entrances and exits, as well as the debts and credits of the individual condominiums and towards third parties.

According to the Supreme Court, therefore, in the face of a detailed request from the new administrator, the second instance judges should not have imposed on him the obligation to prove the existence of the **documents relating to the management of the common thing** and necessary for the reconstruction of the relationships. With other condominiums and with third parties.

In other words, according to the Supreme Court, it is the responsibility of the new administrator to promptly indicate the documents that he asks for delivery, necessary for the management of the condominium, while it is up to the previous administrator to object that the documentation is not related to the fulfillments and obligations imposed. burden of the administrator or to prove the reasons that hinder or prevent the delivery of the requested documentation.

In any case, the supreme judges believe that, even if the documentation relating to the management of the condominium can be acquired by the new administrator by making a request to the condominiums or to third parties who have come into contact with the condominium, the previous administrator is required to deliver the documentation in its possession, in fulfillment of a legal obligation and the duty of correctness and diligence, cooperating loyally with the new condominium administrator.

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