



How to check if all the condominiums have been regularly notified of the conduct of the assembly?

Call notice, how to check if it has been delivered to everyone.

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The assembly may not act unless it is established that all eligible persons have been duly summoned.

This is the content of the sixth paragraph of Article 1136 .c.

Constare: that is, to be, to be known (Treccani vocabulary).

The well-known law amending the discipline of the condominium in buildings - Law No. 220 of 2010 popularly known as the law of reform of **the condominium** - replaced the term condominium with the phrase entitled.

Two solutions are **currently feared**:

- **the administrator** is also required to summon, for example, tenants (see Article 10 l. 392/78);
- **entitled persons** must be understood as persons having a real right in the building and therefore be referred only to owners, usufructuaries and the like.

Beyond that the rule **is clear**: **either** you are aware that everyone has been regularly summoned or you cannot deliberate.

Notice of call, the form

It is worth remembering **that the notice of convocation**, which must be sent by Fax, PEC, Registered Letter a.r. or by hand, must be communicated to the condominiums at least five days before the date set for the first convocation.

According to the first judgments that dealt with the form of the notice of convocation of the condominium assembly after the changes introduced by law n. 220/2012, *this, cannot be communicated by an ordinary e-mail, on pain of the possible invalidation of the resolution subsequently adopted. This is because the forms of communication of the notice of convocation are identified by art. 66 disp. Att. c.c. and are taxable.* (in that sense, so, Trib. Genoa 23 October 2014 n. 3350, contra, although with a very unclear reason App. Brescia 3 January 2019, n. 4).

The case law has made it **clear that the term** communication must be understood to be receipt of the notice itself (cf., between the various Tribs. Rome 7 July 2009 n. 15048).

In addition, at the end of five days, *ex Article 66 of the Treaty.c.c., the general rule 'dies a quo non computatur, dies ad quem computatur' must apply.* (Trib. Rome 7 July 2009 n. 15048). That **is: if it receives the notice on day 10**, the meeting may be held no earlier than the 15th.

Given the delivery times of the recommended, it is always advisable to consider a longer term than the one just described. At least 10-15 days.

The problem that is rightly raised is as follows: let us say that the administrator acted in good time, but that until the day of the meeting he did not have all the notices of receipt of the



recommendations back.

Notice of call, how to prove receipt?

If the call was made exclusively **by pec**, or by hand delivery and any countersignature or by fax, the problem does not arise: in these cases the receipts are immediately verifiable.

And in the case of the **convocation by registered mail a.r.** ?

How much can the assembly be said ritually convened and therefore you can see the regular convocation of all the condominiums?

It depends, it's our answer. From what?

Let's see below.

In a recent letter concerning the sending of a letter of formal **notice**, the Court of Cassation had the opportunity to state that, on the assumption that the debtor's act of formal notice is not subject to special methods of transmission, nor to the legislation on the service of judicial documents, where such notice is made by registered mail by means of the postal service, its receipt by the addressee may be proved, as was done by the court of second instance, also on the basis of the presumption of receipt based on the arrival of the registered letter to the addressee, since the addressee is honest to prove that he was not aware of it through his own fault (*Cass. 13651 of 2006*).

This is because the receipt of dispatch from the post office constitutes, even in the absence of the acknowledgement of receipt, certain proof of the shipment, and from it follows the presumption, based on the unique and conclusive circumstances of the shipment *and the ordinary regularity of the postal service, arrival of the document to the addressee and his knowledge ex Art. 1335 code civ.* (*Cass. No 12954 of 2007; Cass. No. 13488 of 2011*)" (*Cass. 28 November 2013, n. 26708*).

Notice of call, if by fundamental mail a reasonable advance

The principle applies to any communication, in short also to the notice of convocation.

So what?

The administrator knows the **addresses of the condominiums** because they are required to communicate them to him pursuant to art. 1130 n. 6 c.c. (**condominium registry**), the envelope sent is given for known if delivered to the right address (in our case the one indicated by the condominium or in the absence of the one resulting from the public registers), ergo: it can be said that the condominium assembly is regularly convened if the administrator has sent the notice of convocation with a reasonable period of advance to make the one indicated in art. 66 disp. Att. Dc.

It is worth recalling that, pursuant to Art. 66, third paragraph, disp. Att. c.c. " in case of failure, late or incomplete convocation of the *right holders, the shareholders.c resolution may be annulled pursuant to Article 1137 of the Code at the request of dissenters* or absent because they are not ritually summoned".

It is always good to bring to the meeting, in order to verify by **the president**, all the documentation relating to the convocation procedure, therefore: list of the registered letter, any signature lists, acknowledgement of receipt, notice of delivery generated by the pec manager, etc.

These documents must be **verifiable by** the President even in the case of an assembly to be held by videoconference.

Source: <https://www.condominioweb.com/avviso-di-convocazione-lassemblea-non-puo-deliberare-se-non-consta-che-tutti.1930>

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