



## Subtraction water meter reading, just a photo.

The law does not require a contradictory reading, which is only useful in the event of disputes.

Avv. Anna Nicola - Turin Bar 10/06/2021

### Water meter reading, the question

*Dear Editors, I am writing to have your opinion.*

For years **our administrator has been** allowing water meter readings by sending the readings by SMS and since **what's app has been available**, by this means.

*If consumption seemed anomalous, in short, too high or too low, he would send the reader.*

*From this year he says that the law does not allow it. **Directly read by the person in charge** and if we are not there ... you pay like last year.*

*It doesn't seem so **normal to me**, what do you think?*

### Reading of the subtraction water meter in the condominium, no rule establishes that cross-examination is mandatory

The determination of water consumption for the individual property does not require a cross-examination between the parties.

The regulations of the service operators provide that the **meter reading** must be carried out at least once a year and that it is carried out by employees of the supplier or by personnel appointed by the same.

When reading is not possible, the staff leaves a special **postcard** in the mailbox for **self-reading**. Now the transmission systems are more modern, with the use of sms or the like.

On the basis of this system, the user sends the data of his meter to the manager to allow him to proceed with the **accounting**.

This also applies in the case of the **condominium**, taking into account that the individual apartments have their own subtraction counter and that the administrator is the one who manages and collects the data for the distribution, i.e. the company that has contracted out the invoice distribution service for the water service.

The individual condominium periodically provides the administrator with the data on his consumption: the subdivision of the cost must be made, for the consumption quota, in relation to the consumption itself.

### Subtraction water meter reading in condominium, the administrator must be content with the photo

How does the administrator know that the reported data is correct? The only system is to request that the periodic consumptions are taken through a **photograph** of the meter for the part in which it shows the consumption numbers, perhaps with an indication of the date on which it was taken.

Being an individual housing system (App. Bari 9 October 2018 n. 1722, it is always believed to be owned by the manager), it is to be understood as the property of the individual.

For this reason, the administrator **cannot make a forced access** in the single apartment to obtain the measurements of the actual water consumption, having to be satisfied with the photographic

reproduction. The same applies if the system is believed to be owned by the manager.

If, then, **the subtraction meter is owned by the condominium** (which is rare but not impossible), the administrator or his employee will have the right to an inspection for reading, but nothing prevents the condominium, for various reasons unable, can send communication of the reading itself, with a clear personal assumption of responsibility, subject to subsequent verification. **There is no rule of law that prohibits the condominium from communicating the reading, but the law requires that the communications be truthful.**

In point of allotment of expenses, some **corollaries** are highlighted.

The administrator can then, quite legitimately, **calculate the internal distribution** of the pro rata expenses in consideration of the individual and **actual consumption** of each of the condominiums, regardless of the circumstance that these, individually considered in their consumption, would not have allowed the application of the the aforementioned reduced rate (Cass. n. 3712/2003).

It should also be considered that the distribution of the costs of the water bill, in the absence of subtraction meters installed in each individual real estate unit, must be carried out, pursuant to art. 1123 1st paragraph of the Italian Civil Code on the basis of thousandth values, so that it is vitiated by intrinsic unreasonableness, the shareholders' resolution adopted by a majority that adopted the different allocation criterion per person based on the number of those who live permanently in the property, exempt from the contribution condominiums whose apartments remained empty during the year (Cass. 17557/2014).

## **Reading of the subtraction water meter in the condominium, in case of anomalies the contradictory reading solves them**

The recording of consumption by reading individual meters is assisted by a mere **presumption of truthfulness**.

The Water Service Operator, by reason of the general rule of distribution of the burden of proof, must prove that the **consumptions charged to the user** are not flat-rate, being derived from the periodic and contradictory reading of the meter results.

The counter, in mind of art. 2712 of the Italian Civil Code, is the probative instrument assisted by a presumption of **suitability for exact accounting**, thanks to the tests and checks carried out on the same by the service manager (Court of Latina, 21 March 2018).

For his part, the user must demonstrate that **the excessive consumption** is due to factors outside his control, highlighting that he has diligently monitored so that any intrusions by third parties are not able to alter the normal functioning of the meter or cause an increase in the consumption (Cass. 19 July 2018 nr 19154; App. Bari 9 October 2018 n. 1722).

All this if you **are in litigation** where there is usually no constructive confrontation of the parties on a personal level.

To **avoid litigation**, it is clear that the joint reading of the meter results is capable of giving certainty of actual consumption. Both from the point of view of the proof facing the manager, and as regards the individual user.

The same is true in the case of subtraction water systems in a condominium.

## **Reading of the subtraction water meter in the condominium, if the condominiums bluff even in a criminal case**

The condominium must give timely information on his periodic water consumption. Only on the basis of actual consumption, the amount that is required to pay is calculated.

If it is found that the individual has **altered the document** on the basis of which he communicates the consumptions recorded, as we have seen before, normally by means of the photograph of the meter, in order to pay less, he incurs a crime.

In fact, the alteration of the document is aimed at reporting a water consumption lower than the actual one, with the consequence that for the remaining part there is the case of **fraud**, consisting in the alteration of the data for the purpose of the unjust profit consisting in the payment of the water consumed to a lesser extent than normal. The same is true in the case of tampering with the meter.

In accordance with art. 642 of the Italian Criminal Code, the theft consists **in the illegitimate** and willful **removal of the property** of others from the holder, in order to profit from it for oneself or for others. The legal asset protected by this case is the patrimony, understood in a broad sense and as a set of assets that a person owns.

The protection of the property has constitutional recognition, pursuant to art. 42 of the Constitution in the guarantee of the right of ownership.

On a parallel level, the crime of theft was found in the conduct of the person who steals and takes possession of 85 liters of diesel fuel, stolen with a hose from the tank of a nursery school (Criminal Court no. 48880/2018).

Source: <https://www.condominioweb.com/lettura-contatore-sottrazione-acqua-chi-la-deve-fare.18174>

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