



## The responsibility of the condominium administrator for bad management .

**The serious accounting irregularities made by the administrator in the course of management and the failure to deliver the documentation relating to the condominium upon termination of the assignment constitute hypotheses of bad management in the relationship of mandate that has elapsed.**

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The condominium administrator is the management and representative body of the condominium and is obliged, by virtue of a specific contract, to carry out one or more legal acts in the interest of the condominium structure.

His figure, therefore, falls within the case of the mandate with representation, as expressly referred to in art. 1129 of the civil code which, among other things, provides that, for all that is not expressly regulated, the rules on the mandate are applied to the condominium administrator.

In the face of serious irregularities in the management of the **res communis**, the condominium reform law, L. n. 220 of 2012, introduced, in the aforementioned **art. 1129 cc.**, a series of hypotheses determining the revocation of the director which, however, cannot be considered exhaustive, since the cd. **bad gestio**, every time the administrator carries out his own activity by engaging in conduct that does not respond to the common interest of the representatives with consequent violation of the duty of diligence of the good father of a family pursuant to art. 1710 of the civil code and obligation to pay compensation for damage due to its negligent activity.

The condominium administrator will therefore be able to answer for the violation of the obligations assumed in the exercise of his mandate, both in civil and criminal matters.

## The civil liability of the condominium administrator.

The contractual civil liability of the administrator, pursuant to art. 1218 cc, refers to the obligations assumed towards the condominium by reason of the mandate relationship between the parties.

The administrator has, in fact, the duty to carry out the task with the **diligence of a good father of a family**, that is, to carry out the tasks proper to his function, as provided for by the rules referred to in Articles 1130 and following of the civil code, among which the most important are: ensuring compliance with the condominium regulations, keeping and managing the condominium registry records; regulate the use and enjoyment of the common parts; collect contributions; provide for tax obligations as well as maintenance costs and those for the exercise of common services as well as carry out any acts of conservation of the common good; draw up the annual report; open a current account in the name of the condominium, etc.

Failure to comply with these duties, a general expression of poor performance of the assignment, entails the civil liability of the administrator.

## The criminal liability of the condominium administrator.

The administrator is criminally liable when he violates a criminal law. The casuistry is obviously wide, but in general it can be said that it is criminally responsible when: it does not observe legal or public safety regulations; does not take the necessary safety measures in the condominium building; does not intervene to avoid the creation of dangerous situations in addition of course to the carrying out of any crimes such as: violation of the privacy of condominiums, aggravated fraud in the event of an untruthful report or even embezzlement in the event of failure to return the management or use documents for your own benefit of sums paid by condominiums to pay third

parties.

A hypothesis of both civil and criminal liability on the part of the administrator may occur in the event of **bad** accounting management such as to determine a failure in the accounting of the Condominium due to inconsistencies between what is written in the final accounts and what is actually paid by the condominiums as well as caused by the " embezzlement of part of the sums paid by the condominiums and used for the personal advantage of the administrator rather than to meet the condominium debts towards third parties.

A recent sentence of the **Court of Milan, n. 311/2022**, dealt with the question of the **bad management** of the condominium administrator determining civil and criminal liability.

## **Responsibility for bad accounting management of the condominium administrator. The case decided by the Court of Milan.**

The sentence in question dealt with a case of responsibility of the Condominium Administrator for bad management in the exercise of his mandate such as to lead to a failure of the Condominium's accounting with shortages in the accounting records and confusion between the assets of the Condominium with that of the administrator.

In ascertaining responsibility for **bad gestures** of the condominium administrator who saw him sentenced to compensation for damages in favor of the condominium, the Court took into account the results of the accounting Ctu carried out in court and drew evidence from the condemnation, albeit not definitive, of the administrator on site penalty for **embezzlement** of sums paid by condominiums and intended for third party suppliers of goods and services for the condominium.

In fact, due to the technical-accounting nature of the case, in order to determine whether or not the administrator has a civil liability for **bad management**, the help of a technical accountant, auditor, was necessary for the analysis of the final accounts. relating to the management period in dispute.

The report resulting from the analysis of the aforementioned final balances highlighted the discrepancies between what was recorded and what was paid by the condominiums as condominium expenses to cover the amount due to suppliers.

The Ctu was therefore considered by the Court as **objective proof** on which to base the assessment of the administrator's **mismanagement**, since it is a factual assessment detectable only with certain technical skills (thus taking up a ruling of the Supreme Court, n. 3710/2003).

Not only that, the Court, recalling other consolidated jurisprudence of legitimacy, believed that it could draw **evidence** on the existence of liability for **bad management**. of the administrator, from the criminal sentence, although not yet irrevocable, of conviction of the same for the embezzlement of sums used for his own advantage rather than to pay the suppliers of the condominium.

The evidence constituted in a criminal proceeding, in fact, according to constant jurisprudence, can also be used as an exclusive source of the judge's conviction, given the admissibility of atypical evidence and in light of the principle of procedural economy, especially with reference to appraisals and technical advice. .

They are equated to documentary evidence for entry into the trial and the relative evidential effectiveness is commonly indicated as comparable to simple presumptions pursuant to art. 2719 of the civil code or to the test arguments (see Cass. N. 10599/2014; Cass. N. 11555/2013; Cass. N. 4667/1998 etc.).

The use by the administrator of sums received from the condominiums of the building for supplies for his own benefit, in addition to constituting the crime of embezzlement, also constitutes a serious civil irregularity pursuant to art. 1129 paragraph 12 n. 4 cc consisting of the confusion between the assets of the condominium and the personal assets of the administrator.

## **Another hypothesis of bad management by the condominium**

## **administrator: the failure to produce the condominium management report and the failure to deliver the documentation relating to the condominium.**

**The art. 1129 of the civil code** which regulates the administrator's obligations, requires him, at the time of termination of the assignment, to deliver all the documentation in his possession relating to the condominium and its condominiums: to the incoming administrator, where the assembly has provided for his designation, or to the individual condominium who requests it, in the event of failure to appoint the new administrator.

The obligation to keep the condominium documentation pertains to the nature of the condominium relationship, both on the basis of the rules on the mandate, in particular of art. 1713 cc, for which there is the obligation of the administrator to return to the condominiums, at the end of the management, what has been received in the exercise of the mandate on behalf of the condominium, therefore also all the documents that refer to the management, both for the application of the general principle referred to in art. 1176 cc

It follows that the failure of the administrator to comply with the obligation to produce and deliver the documentation relating to the condominium also constitutes a hypothesis of **bad management** which accompanies the contractual responsibility of the director pursuant to art. 1218 cc, again due to the existing mandate relationship with the condominium.

Source: <https://www.condominioweb.com/la-responsabilita-dellamissioni-di-condominio-per-mala-gestio.18955>

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