



## **Renewal of the fire prevention certificate: the appointment by the administrator to a professional is an act of ordinary administration.**

The fee due to the professional for the renewal of the fire certification is borne by the Condominium and not by the administrator.

Lawyer Eliana Messineo 06/30/2022

The condominium administrator represents a private law office similar to the mandate with representation, with the consequent application, in the relations between the administrator and each of the condominiums, of the provisions on the mandate; the contract, stipulated by the representative administrator, in the name and in the interest of the condominiums represented and within the limits of the powers conferred on him, directly produces effects towards the representatives (Cass. SS.UU. n. 9148/08).

The administrator, pursuant to **art. 1131 cc**, has the representation of the participants in the condominium, within the limits of the powers established by art. 1130 (powers of the administrator of ordinary administration) or of the greater powers conferred on him by the condominium regulation or by the assembly.

The cardinal principle in terms of the powers of the director is that according to which the acts of ordinary administration can be carried out by the director independently, while those of extraordinary administration always require a shareholders' resolution.

The administrator, in fact, has executive functions and governance of common things and must carry out the resolutions of the assembly, regulate the use of common things, ensure compliance with the condominium regulations, collect contributions, carry out the conservation deeds of the rights inherent to the common parts of the building as well as everything established in **art. 1130 cc** which lists the essential duties of the administrator.

These are **duties of ordinary administration** for which the director does not require any authorization from the shareholders' meeting.

On the contrary, the **administrator** cannot act autonomously in the case of acts of **extraordinary administration** such as, for example, the renovation of the courtyard or the facade. These decisions are remitted solely to the assembly, unless the extraordinary maintenance works are of an urgent nature, but in this case the administrator must report them in the first assembly.

The Court of Cassation, already with the sentence of 7 May 1987 n. 4231, clarified that the powers of the director and of the assembly are precisely delineated by the provisions of the civil code, limiting the powers of the director to ordinary administration (hypothesis referred to in art. 1130 of the civil code) and reserving to the **assembly of the condominiums** the decisions regarding extraordinary administration; in the latter case, the administrator's initiative without the prior resolution of the shareholders' meeting is allowed only if, for example, it is a question of works or fulfilments that present the character of urgency, so that, lacking this premise, the initiatives taken by the administrator himself with regard to extraordinary administration activities do not create obligations for the condominiums, unless subsequently ratified.

In the list of the ordinary powers of the director pursuant to art. 1130 c. those provided for *"by the current provisions of the law"* must be added; as stated in the first part of the said article.

Indeed, there are numerous special laws that provide for further powers for the administrator,

such as in the field of energy certification, asbestos remediation, fire prevention and plant maintenance.

Therefore, the question arises whether the appointment by the administrator of the assignment to a professional for the practice of **renewal of the fire prevention certification** falls within the scope of the ordinary powers of the director who, therefore, does not have to obtain prior authorization from the shareholders' meeting, or this activity is extraordinary for which it requires authorization or ratification by the shareholders' meeting.

The question assumes particular importance in order to establish on whom (on the condominium or on the administrator personally) the expense as compensation for the activity commissioned by the administrator to a professional for the issue of fire prevention documentation.

The answer to this question is provided by **sentence no. 332 of 2018 of the Court of Avellino** which, as judge of appeal, confirmed the sentence of the justice of the peace who had held that the administrator, in appointing a professional for the renewal of the fire prevention certificate, had acted in 'scope of its ordinary powers (so that no prior shareholders' resolution was required).

**Practice for the renewal of the fire prevention certificate: the conferment of the related appointment by the administrator to a professional is an act of ordinary administration.**  
**The story**

A professional for **fire prevention and design**, requested and obtained an injunction against a condominium for the payment of a sum as compensation for the professional activity carried out on behalf of the previous administrator (practice necessary for the renewal of the fire prevention certificate).

The Condominium objected, pleading that it had never commissioned this assignment, disavowing the execution of the works and assuming that the self-employed administrator was legitimated, who had acted outside of his powers and had never reported to the new administrator of the assignment.

The condominium administrator, called into question, was constituted, pleading that he had conferred the task in question on the professional to comply with the legal obligations governing the subject of fire prevention and that it was a mandatory fulfillment falling within his powers as administrator for the protection of the common parts; the new administrator was aware of the assignment as per documented delivery of the apartment.

The Justice of the Peace rejected the opposition and confirmed the injunction.

The condominium entrusted to two grounds of censure against the sentence of the Justice of the Peace proposed an appeal:

1. lack of proof of performance of the assignment;
2. error and false application of art. 1130 paragraph 1 of the Italian Code of Civil Procedure, since the litigation activity is not included in the acts of ordinary administration, so that the authorization of the assembly or the ratification of the acts was necessary.

The Court of Avellino rejected the appeal and confirmed the sentence of the Justice of the Peace.

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**The reasons for the decision**

The Court of Avellino considered the ruling of the justice of the peace to be correct, which had considered the appointment of the fire-fighting professional by the condominium administrator to be an act of ordinary administration and, consequently, had deemed the prior resolution of the assembly unnecessary.

The Court clearly highlighted that the duties of the administrator to protect the common parts

and, therefore, fully falling within his powers, are not limited to those indicated in the civil code, but are also provided for in numerous special laws, such as for example in the field of **energy certification** , asbestos remediation, fire prevention and plant maintenance.

In particular, the administrator is obliged to request the issue of the fire prevention certificate or to renew it before the expiry date if it has already been issued.

It must also keep the activities, systems, plants, devices and equipment relevant for the purposes of fire safety in efficiency as well as carrying out control checks and maintenance interventions according to current legislation, keeping up to date and making available a register of controls.

The administrator who does not comply with the legal obligations governing the subject of fire prevention is liable to criminal responsibility.

In appointing a professional qualified for fire prevention and planning, the administrator therefore acted within the scope of his ordinary duties which do not require a shareholders' resolution.

The administrator therefore acted - by virtue of the mandate with representation that binds him to each participant in the condominium - in the name and in the interest of the individual condominiums represented, with the consequence that the compensation due to the professional for the **renewal of the certification fire prevention** is the responsibility of the condominium and not the administrator.

Source: <https://www.condominioweb.com/pratica-per-il-rinnovo-del-certificato-di-preenzio-antincendi-il.19500#2>

GECOSEI by Giuseppina Napolitano

*Giuseppina Napolitano*