



The handover is an obligation.

The outgoing administrator must deliver all the condominium documentation in his possession to his successor.

Attorney Gianfranco Di Rago 01/13/2022

The condominium administrator who has resigned or who has been revoked, by the assembly or in court, must deliver all the **condominium documentation** in his possession to his successor as soon as possible.

It is, in fact, an obligation expressly provided for by the law and, in any case, deriving from his qualification as agent of condominiums.

Otherwise, therefore, the administrator puts in place a clear contractual breach and the condominium can take legal action against him to obtain the return of the documents and the provision of a penalty for delayed delivery.

This is what emerges from the recent sentence no. 855 pronounced by the Court of Ferrara and published on 30 December 2021.

The obligation to return the condominium documentation.

The right of condominiums to be returned the condominium documentation **entrusted to the outgoing administrator** for the execution of his mandate is based on the obvious consideration that it belongs to the condominium, as it is gradually delivered to the newly appointed administrators and subsequently formed by them for the execution of the mandate conferred by the condominium assembly.

So much so that art. 1129, paragraph 8, of the Italian Civil Code - as amended by the 2012 condominium reform law - requires the outgoing administrator to deliver all the condominium documentation to the new administrator or, failing that, to the condominiums themselves (on this point see also Cass. Civ. no. 13504/99).

Moreover, it is the same art. 1713 cc - applicable to the **relationship between administrator and condominiums** - to oblige the agent to render the account of the mandate " *and to remit to him all that he has received due to the mandate* " (see Cass. Civ. N. 815/2000; on the point Cass. civ. n. 767/66 also highlighted how " *the return of the account must be accompanied by all the supporting documents* ").

It follows that " *the administrator who has ceased, for any reason, from office is required to return what he received in the exercise of the mandate on behalf of the condominium, including all documents, of any nature and origin, relating to condominium management* " (see Court of Palermo, order 05/06/2014, as well as the most recent Cass. Civ. Section VI, 8 March 2019, n. 6760).

The decision of the Court of Ferrara

In the case faced by the Court of Ferrara, the administrator revoked by the assembly had not delivered the condominium documentation to his successor, despite the various formal requests that had been addressed to him. Hence the **start of the judicial procedure**, in which the old administrator had not even constituted himself.

The Court, in deciding the dispute, therefore recalled 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 the condominiums, of the provisions on the mandate.

It follows that, pursuant to art. 1713 cc, upon expiry the administrator is required to return what he received in the exercise of the mandate on behalf of the condominium, ie everything he has in hand, regardless of the management to which the sums refer (see Cass. civ. Section II, 16 August 2000, n. 10815).

In this regard, more recently, the Supreme Court reiterated that "*the condominium administrator who has ceased from office is **required to return all the documentation in his possession** and pertaining to condominium management, by returning it to the incoming administrator, where the assembly has provided for its designation - explaining the relative resolution of appointment also effective towards third parties, for the purpose of substantially representing the condominium - or to the individual condominium who requests it, in the event of failure to appoint the new administrator*" (Cass. Civ. Section VI-II, June 24, 2021, n. 18185).

It should be noted that the condominium had also asked the Judge to apply a **daily penalty of € 50.00 in case of delayed delivery**, referring to the provisions of art. 614-bis of the Italian Code of Civil Procedure. This is certainly an excellent expedient to accelerate the debtor's compliance with what is indicated in the judicial sentence.

The Court of Ferrara, in accepting the application, however, decided that the penalty provided for in the event of delayed fulfillment by the revoked administrator should be set at € 200.00 per month, starting from the date of notification of the provision.

The conservation of condominium documentation.

The condominium documentation must be kept in order and kept by the administrator for obvious needs of transparency and verifiability a posteriori of the correct fulfillment of their contractual obligations and *pursuant to law* (Article 1130, paragraph 1, no. 8, of the Italian Civil Code).

The documentation referred to in art. 1130, paragraph 1, n. 6 and n. 7, cc must therefore be kept for an unlimited duration, as it pertains to the formation and correct management of the condominium.

On the other hand, it can be assumed that the condominium reports and the related supporting documentation must be kept for at least ten years, according to the provisions of Articles 2220 and 2946, on the ordinary limitation periods, and 1130-bis of the civil code, as well as the rules on the prescription of tax obligations.

For supporting documentation, referring by analogy to the jurisprudence developed in relation to articles 2219 and 2220 of the Italian Civil Code on the subject of accounting records, must then be understood not only as the entry and exit items and the relative allocation quotas, but also all those entries that "*allow to identify and assess the ways in which the assignment was carried out. and to establish whether the work of the payer is adequate to the criteria of good administration*" (Civil Cassation Section I, 7 February 2000, no. 9099).

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GECOSEI by Giuseppina Napolitano

Giuseppina Napolitano