



The minutes that do not indicate the voters or the quotas are invalid.

The report which does not allow the quorum required by law to be reconstructed, not even by proceeding indirectly by means of calculation by difference, must be cancelled.

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The minutes are the heart of the meeting, the indispensable document for a resolution to be considered existing. Despite this prominence within the condominium assembly, the law says practically nothing about the **methods of drafting the minutes**, limiting itself only to deducing that it must be in written form.

Fortunately, jurisprudence has intervened to fill the gap, identifying some principles that are now peaceful, such as those of completeness and clarity. In this context, sentence no. **497 of 7 February 2023** issued by the Court of Appeal of Naples, with which the Neapolitan college sanctioned the **invalidity of the report which does not indicate the voters or the quotas**. Let's delve into the matter.

Grounds for appeal against the minutes of the meeting.

A couple, co-owners of the same building, challenged the condominium resolution with which the assembly ratified some maintenance work on the cornice.

According to the plaintiffs, the disputed resolution had to be annulled because the relative minutes did not verify its **valid constitution** and the **regular convocation of all condominiums**, having then approved the first item on the agenda without specifying whether with the criterion of unanimity or of the majority.

Having rejected the application in the first instance, the plaintiffs appealed for the same reasons.

Failure to convene can only be enforced by the uninvited condominium.

The Neapolitan Court, with the judgment in question, accepted one of the reasons for the complaint, deeming **the report invalid, which does not indicate the voters or the quotas**.

Before arriving at this decision, however, it is worthwhile to dwell on the other grounds for appeal and the reasons for their rejection.

First of all, according to the Court of Appeal, the **omitted convening of a condominium** can only be asserted by the owner not ritually invited to take part in the meeting.

According to the peaceful teaching of the Supreme Court (Cass., sentence n. **10071 of 05/28/2020**), in fact, the duly summoned condominium cannot challenge the resolution due to **lack of summoning of another condominium**, as the interest in making the assertion of a defect which makes a resolution of the shareholders' meeting void cannot be reduced to the mere interest in removing the deed, or to an abstract claim of its absolute conformity with the legal model, but must be an expression of its qualified position, aimed **at** eliminating the situation of objective uncertainty that that resolution generates as to the existence of the rights and obligations deriving from it.

Failure to summon the co-owner.

failure to convene the co-owner of the property does not even hit the mark ; according to the



appellants, only one of the spouses (the husband) would have received a regular notice of summons.

The validity of the convocation for the meeting of the condominium assembly of one of the "pro indiviso" co-owners of the floor or portions of the floor of a condominium can in fact also be deduced from the notice given to the other co-owner, if presumptive circumstances exist such as to make **one** believe that the second co-owner has made the first aware of the summons itself (Cass., sentence n. 1206 of 02/16/1996 which, in the case submitted to its scrutiny, being the spouses co-owners of an apartment, cohabiting in full agreement and without conflict of interests between them, considered it presumable that the invitation notified to one of them for the condominium assembly had also been brought to the attention of the other).

Failure to indicate the participants in the meeting and the thousandths of ownership.

participants and their respective **thousandths** were not indicated in the minutes , deserves acceptance.

According to the Neapolitan judge, these data were easily inferable from the list placed at the beginning of the report where, next to the names of the condominiums, the thousandths of ownership and presences in person or by proxy appeared. These data allow you to easily check the valid constitution of the meeting.

The failure to identify the voters, their number and the relative thousandth shares.

On the other hand, the complaint regarding the **omitted indication of voters and quotas** with reference to the individual decisions on the items on the agenda deserves acceptance.

In the present case, in fact, the condominium assembly did not even appear to have submitted the first item of the agenda for approval by those present, proceeding with the resolution without any consultation with them.

Therefore, the principle according to which *"although the related report should contain the list of names of the condominiums present, indicating absent and dissenting, as well as the value of the respective shares, the lack of such indication does not affect the validity of the resolution cannot therefore be applied, if this incompleteness can be remedied by means of an " aliunde " check of the regularity of the procedure.*

*Therefore, the resolution whose minutes, even if they do not indicate the names of the condominiums who voted in favour, nonetheless contain the list of all the condominiums present, with the relative thousandths and also bear the name of those who abstained and those who voted against, as well as the total value of the respective thousandth shares, allowing these data to establish with certainty, by difference, how many and which condominiums voted in favour, as well as to verify that the resolution passed has exceeded the "quorum" required **by art. 1136 of the Civil Code** », since in the contested report it is not possible to deduce in any way who the voters were and what will they expressed.*

The United Sections have in fact considered that there are no doubts on the annulment " of the assembly resolutions in the event that the names of the absent and dissenting condominiums are not identified, and reproduced in the relevant minutes, and the values of the respective thousandths " (Cass., Un. Section, sentence N. 4806/2005).

In fact, in the majorities required for the validity of the assembly itself and the approval of the resolutions converge, in addition to the personal element (the condominium participants), the real one (the proportional share of the building expressed in thousandths).

The minutes of the condominium assembly represent the **description of what happened in a given meeting and all the conditions for the validity of the resolution** adopted must emerge from it , without uncertainties or doubts.

the names of the condominiums who voted in favor of the first item on the agenda have been completely omitted or even the indication of the unanimity reached, a gap that does not appear by no means amendable with the list of condominiums present and those who have issued a proxy, with the indication of the name of the representative of each and the value of the respective shares.

In the situation described, it is absolutely impossible to verify with certainty, *ex post*, even proceeding indirectly, by **calculation by difference**, on the basis of the report and the general table of thousandths, exact observance of the provisions of art. 1136 of the Civil Code, and therefore whether the resolution was validly adopted for having been approved by the quorum required by law, from which it follows that it can be annulled.

It is not known, not even *per relationem* with other elements intrinsic to the minutes of the meeting, whether there was a vote and if there was, who took part in issuing it and what was his expression of vote and, ultimately, what are the state any majorities in favor of it.

For these reasons, the contested resolution must be cancelled.

Source: <https://www.condominioweb.com/e-invalido-il-verbale-che-non-indica-i-votanti-ne-le-quote.20367#2>

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