



Is the resolution establishing that e-mail must be used to call future condominium meetings valid?

To send the notice of meeting you can use the "electronic method" using the PEC, while the use of e-mail is discussed.

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The meeting, in addition to being called annually on an ordinary basis, can be convened on an extraordinary basis by the administrator when he deems it necessary or when requested by at least two condominium owners representing one sixth of the value of the building.

Article 1136 of the Civil Code, paragraph 6, specifies more specifically that the meeting cannot pass resolutions unless it is established that all those entitled have been duly convened. **Article 66 avail. att. cc**, **paragraph 3**, adds that the notice of meeting must be communicated.

Taking into account that e-mail is a very widespread means of communication and has now entered into daily use (almost all of us have at least one e-mail account), the problem arose of establishing whether the calling of a meeting can take place via email or if it is possible by resolution to establish that the calls for future condominium meetings must be sent via email.

In this last regard, a recent decision of the Court of Rome is particularly interesting (**sentence of 9 October 2023, n. 14299**).

Is the resolution establishing that e-mail must be used to call future condominium meetings valid? Fact and decision

The owners of real estate units forming part of a condominium challenged a resolution, complaining about the irregularity and/or non-existence of the delegations due to the failure to indicate the names of the delegates and, therefore, the violation of the art. 67 available att. cc and the articles. 27 and 28 of the condominium regulations; the lack of a quorum for deliberations following the removal of some condominium members in charge of the assembly; **the invalidity of the resolution convening future meetings via ordinary e-mail due to contrary to mandatory rules and the Regulations**; the incompleteness and generic nature of the agenda; the invalidity of the resolution on the assignment to the Condominium Committee of the choice of a technician to ascertain the conformity of the concierge and on the appointment of the same Committee.

For all the reasons expressed above, the plaintiffs demanded that the contested resolution be ascertained and declared null and/or annulled, subject to (precautionary) suspension of its execution pursuant to art. 1137 cod. civ.; in any case the plaintiffs requested to order the defendant to pay, in favor of the plaintiffs, the costs and fees of the compulsory mediation proceedings, in addition to the costs and fees of the present proceedings.

The condominium was formed and requested, as a preliminary matter, the rejection of the request for suspension of the effectiveness of the contested resolution and, on the merits, the rejection of the application.

The Court deemed the resolution to convene future meetings via ordinary email invalid due to being contrary to mandatory rules and regulations. The judge himself recalled that the art. 72 available att. cc provides **for the mandatory nature of the art. 66 available att. of the Civil Code**, which, in the third paragraph, strictly indicates the methods for sending the notice of meeting (registered mail, PEC, fax or hand delivery), not including the meeting **via e-mail**.



Moreover, the art. 26 of the regulation prepared by the builder established the following: "the condominium meeting is convened by the administrator by means of an individual notice to be sent by registered letter, even by hand".

Even if we were to admit that a condominium regulation can derogate from a mandatory rule, the modification - as the judge observes - could not take place in the assembly with the majority method with the consequence that the resolution in question should still be considered seriously flawed.

In light of the above, **the Court declared the relative nullity of point no. 2 of the agenda of the resolution** in the part in which it provides "relating to the convocation via e-mail the meeting decides unanimously to make it an official and effective method". However, all other objections were rejected.

Final considerations

As specified in article 66, paragraph 3, disp. att. cc to convene a condominium meeting, registered mail, certified email, fax and hand delivery must be used. The legislator therefore wanted to **"typify" the forms of communication**, limiting them to those that guarantee the actual knowledge of the convocation itself.

In any case the art. 72 available att. cc establishes the mandatory nature of the art. 66 available att. cc (including the third paragraph).

Taking the above into account, it has been specified that the forwarding of the relevant notice via e-mail constitutes a form of communication which is not covered by the aforementioned provision and, therefore, must be considered irregular, as it is unsuitable for guaranteeing effective knowledge of the **call** by part of the recipient (Trib. Sulmona **3 December 2020, n. 243**; Trib. Genoa, Section III, 23 October 2014).

The notice sent to the ordinary email address **violates articles 66, paragraph 3, and 72 provisions. att. cc** ., with the consequence that the convocation cannot be considered completed and **the resolution adopted is vitiated by annullability** (Trib. Bari **30 June 2023, n. 2666**).

Please remember that it is the duty of the meeting, and on its behalf of its president, to check the regularity of the notices of meeting and to give an account thereof through minutes, on the basis of the list of those entitled to participate in the meeting possibly compiled by the administrator (list which may be in turn attached to the minutes or inserted among the documents kept in the appropriate register), **as this is one of the formal requirements required by the collegial procedure** (notice of meeting, agenda, constitution, discussion, vote, etc.), **the failure to comply with which results in the annulment of the resolution** .

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