



Is it possible to set up a delinquent cash fund by majority vote?

The legislator has not foreseen the possibility for the assembly to set up a default fund to resolve the economic difficulties of the condominium.

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The condominium reform has not expressly provided for the possibility of setting up a cash fund to deal with **the liquidity problems caused** by the non-payment of shares by defaulting condominiums.

However, it is not uncommon for condominium administrators, to deal with the lack of liquidity caused by the non-payment of condominium fees by defaulting condominiums, to propose to the condominium assembly **to approve a special cash fund, financed by solvent condominiums.**

In any case, it is an extraordinary fund intended to deal with the credit recovery procedure, to which the administrator is required for the forced collection of the sums due, pursuant to art. 63 available att. cc. and which represents a sort of loan that will be repaid in the event of recovery of the amount owed by the defaulting debtor.

However, the following problem arises: is it possible to establish a default fund by majority?

In the absence of indications from the Legislator, the jurisprudence took care of providing an answer to the question, proposing a "practical" solution.

The issue was addressed **in a recent decision of the Court of Rome (judgment n. 7695 of May 16, 2023).**

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A condominium decided to challenge the resolution with which the assembly had approved the establishment of a fund intended to cover arrears to allow for correct administrative management.

The plaintiff therefore noted the failure to describe the purpose of the fund, pointing out that the criteria for allocating this fund had not been specified and arguing that its establishment had taken place without any real urgency since the situations in any case date back to the past.

The condominium defended itself by pointing out that the fund approved by the assembly of condominiums **was functional to the need of the condominium to meet cash needs caused by the "chronic" arrears of a condominium**; in particular, the defendant pointed out that the fund approved for cash requirements aimed at avoiding more serious damages to all condominiums deriving from the danger of interruption of essential common services such as electricity, the operation of the lift and the lighting of the common parts. **The Court considered the disputed resolution to be fully legitimate** since in the concrete case there were certainly those reasons of urgency which justify the establishment of the cash fund even in the absence of the consent of all the condominiums.

Final considerations

The most recent jurisprudence on the merits has foreseen the possibility of a majority resolution for the approval of a special fund for arrears **but only on the basis of the effective demonstration of the cash situation of the condominium** (App. Catanzaro 24 November 2020 n.1542, Court of Rome 3 September 2020, Court of Brescia 25 February 2020 n.430).



The jurisprudence had already highlighted that, in the absence of a different agreement unanimously adopted as an expression of negotiating autonomy, the sharing of condominium expenses must necessarily take place according to the proportionality criteria established in art. 1123 of the civil code and, therefore, the condominium assembly, acting by majority vote, is not allowed to divide the debt of the condominium shares of the defaulting condominiums among the non-defaulting condominiums (Cass. civ. section II, 05/11/2001, n. 13631).

However, it has been stated that, **in the event of an effective urgent need to draw the necessary sums in another way**, a resolution by the shareholders' meeting is permitted with which, similarly to what happens in a mortgage relationship, there is a tendency to make up for the default of the defaulting condominium with the establishment of an ad hoc cash fund **tending to avoid far more serious damages against all condominiums** (Cass. civ. Section II, **18/04/2014, n. 9083**).

As regards the deliberative quorums necessary for the legitimate approval of the fund, since it is an emergency, it is sufficient that the resolution is adopted, on second call, with a simple majority, i.e. with a millesimal value equal to one third of the value of the building, that is represented by the majority of condominiums present at the meeting.

Source: <https://www.condominioweb.com/possibile-costituire-a-maggioranza-un-fondo-cassa-morosi.20641>

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