



Deadline for forfeiture of appeal and mediation

Assembly resolution appeal: does the request for mediation interrupt the deadline?

Maria Monteleone - Court of Cosenza 05/10/2021

The condominium who wants to contest the assembly resolution for defects that make it voidable has thirty days to start the lawsuit. However, as is known, the condominium matter is one of those for which the **mediation obligation is in force** as a condition of admissibility for the judicial request.

Considering the limited time to **challenge** the resolution, how does the mediation request position itself in relation to the expiry of the **forfeiture period**? How and at what moment does the mediation request interrupt the forfeiture period?

Article 5, c. 6, of the Legislative Decree. n. 28/10 states that, from the moment the mediation request is communicated to the other parties, the mediation request produces the effects of the judicial request on the prescription.

Furthermore, from the same date, the mediation request prevents the **forfeiture for one time only**, but if the attempt fails, the judicial request must be submitted within the same forfeiture period, starting from the filing of the report referred to in Article 11 at the secretariat. of the organism.

A recent ruling by the **Court of Rome** has clarified the interpretation of the aforementioned provision and the interrupting effectiveness of the request for mediation.

Interruptive effect of the request for mediation: the ruling of the Court of Rome

In practice it often happens that, despite the condominium promptly submitting a request for mediation (for example, on the 28th day), the request is then communicated to the condominium by the Mediation Body a few days later, when the 30-day term could already be course.

In this case, the appeal would not be more timely and the condominium's judicial request would be inadmissible.

The Court of Rome, with sentence no. 3159 of 22 - 23 February 2021, specified that the interrupting effect of the forfeiture of the appeal deadline is produced not at the time of filing the mediation request with the Mediation Body, but at the time of **communication of the request to the counterparty**.

So much has also been affirmed by the Supreme Court, according to which on the basis of the clear tenor of the aforementioned art. 5, c. 6, "*it must be considered that only the communication to the other parties of the mediation request, and not even the mere filing of the same, prevents the forfeiture from occurring*" (Cass. Sent. N. 2273/2019).

The *rationale* of the rule is to allow the administrator and the condominium to have certainty, in a short term, regarding the fact that the resolutions adopted by the assembly have been challenged or consolidated, in order to be able to adequately determine the further executive and management activities.

It would be contrary to the *rationale* of the rule, then, to give relevance to the filing of the application with the mediation body, and not to the relative communication to the condominium - which could become aware of it several days after the expiry of the term - would frustrate the rationale indicated above.

The one just reported is the literal interpretation of art. 5, c. 6, of the Legislative Decree. n. 28/2010 and, according to the Roman judges, it does not conflict with principles of a constitutional nature, leaving it to a third party, and not to the subject charged, to carry out the interrupting activity of a forfeiture.

This is because there is a rule (Article 8 paragraph 1 of Legislative Decree 28/2010) that establishes that the same interested party can communicate the request for mediation to the other: "*When submitting*



the **request for mediation**, the person in charge of The body appoints a mediator and sets the first meeting between the parties no later than thirty days from the filing of the application.

The request and the date of the first meeting are communicated to the other party by any means suitable to ensure its receipt, also by the requesting party ".

Therefore, the interested party can introduce mediation and, at the same time, **communicate the start** of the procedure to the condominium, without necessarily waiting for the mediation body to arrange for the meeting and communications on its own account; if he does not make use of this possibility and the communication is then delayed, there is no reason to exclude that the relative consequences are produced against him.

Therefore, the party that intends to take advantage of the interrupting effects of the mediation request can become active and diligent to carry out the communication to the counterpart within the terms.

The faculty of the instant party to directly provide for the communication of the request - expressly provided for by the law - safeguards the literal interpretation of the law, according to which the impeding effects of the forfeiture are connected to the communication of the mediation request, not to its filing, with the chosen body (C. d'App. of Genoa, 946/2018).

How to avoid decay

In light of the foregoing, it is always suggested to challenge the shareholders' meeting resolution by establishing the mediation procedure well in **advance** of the 30-day deadline, in order to allow the mediation body to send the communication to the counterpart in time.

However, for greater certainty and to avoid the risk of incurring forfeiture due to possible delays in the processing of the procedure, it is advisable that the same applicant communicates, through his lawyer, the request for mediation (by certified e-mail or registered letter with return receipt) to the counterpart immediately after filing with the body.

In this way, the interrupting effect of the forfeiture is "controllable" and manageable by the same instant party and is no longer left to the activity of the mediation body.

Source: <https://www.condominioweb.com/termine-decadenza-impugnazione-e-mediazione.18484>

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