



Il rendiconto senza registro
di contabilità: è illegittimo ?



The statement without accounting register: is it illegitimate?

Is the decision of the assembly legal to allocate the proceeds of the condominium to a provision instead of dividing the sums among the condominiums?

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There are sentences particularly fraught with points of interest; one of these is undoubtedly that given by the Court of Monza **on February 8, 2022, n. 296**, in which, among others, it is possible to find the answer to the following question: **is the statement without the accounting register illegitimate?**

In short, the story is as follows: a condominium brought his own team to court for the declaration of nullity and / or annulment of the shareholders' resolution, challenging it for multiple reasons, the most important of which are the absence of the accounting register required by law. **art. 1130-bis cod. civ.** and the decision to allocate the proceeds of the condominium to a provision instead of dividing the sums among the condominiums.

The condominium appeared before the court, pleading, among other things, the lack of legitimacy of the plaintiff. Let's start from here and then reach the fundamental question: **is the statement without accounting register illegitimate?**

The plaintiff's lack of legitimacy

According to the Court of Monza, it is not possible to believe that the condominium is lacking in the **interest to act**. Indeed:

- with reference to the (alleged) formal defects, the Supreme Court established that "*in the matter of action to cancel the resolutions of the condominium assemblies, the legitimacy to act attributed by art. 1137 of the civil code to absent and dissenting condominiums is not subject to the deduction and to the proof of a specific interest other than that in the removal of the contested act, being the interest in acting, required by art.100 of the Code of Civil Procedure as a condition of the aforementioned cancellation action, consisting precisely of the verification of the formal defects of which affected the resolutions*" (Cass., Section 2, Ord. n. 17294 of 19.8.2020);
- what, then, to the (complained) substantial defects, tending the action to achieve financial advantages (in terms of cost savings and, as regards the allocation of funds deriving from rent, to a distribution of sums), not there seems to be no problem in terms of the existence of an interest in acting.

Reporting without accounting register: is it legal?

The main complaint of the plaintiff concerned the **lack of conformity of the report** with the provisions of Article 1130 *bis* of the Italian Civil Code, as it does not contain the **accounting register**.

The plaintiff's defense in fact believed that the accounting register should be physically attached to the accounting documentation.

In this regard, the Court of Monza observes how the jurisprudence of legitimacy has shown that "*in terms of the approval of the report and the budget by the condominium assembly, the condominium administrator is not obliged to deposit the entire supporting documentation of the budget, but only to allow condominiums who request it to view and extract a copy, at their*

expense, of the same documentation, placing the burden on the condominiums to prove that the administrator has not allowed them to exercise this right " (Cass., Ord. N. **13235/2017**).

In the present case, the plaintiff has not even attached that he has been prevented from exercising the right to view the supporting documentation of the budget, so that it does not seem that the condominium can complain of an **information deficit**, if not attributable to himself.

Furthermore, it should be emphasized that the reason for the (abstract) annulment of the resolution in question appears to be attributable to the category of **substantial defects**, so that the condominium who challenges the shareholders' resolution must specify **the concrete interest** that goes beyond the mere violation of the law; "concrete interest" that does not lend itself to being declined in the generic category of "information deficit", rather requiring the specification of the accounting data, the budget item, etc., whose understanding was invalidated by the omission attributed to the administrator.

Provision of proceeds: is it legitimate?

The plaintiff also complained about the decision of the assembly body to allocate the **proceeds** deriving from the lease of condominium space to **provisions** for the renovation of the facades, without therefore proceeding with the **allocation of the sum** among the condominiums.

For the Court of Monza (judgment in comment no. **296 of 8 February 2022**) this reason is also unfounded.

In this regard, it is sufficient to recall the address of the jurisprudence of legitimacy according to which " *it belongs to **the discretion of the assembly** and does not prejudice the interest of the condominiums in the correct management of the condominium, nor their patrimonial right to the accreditation of the proportional sum - because offset by the corresponding lower charge, in advance or as a balance - the establishment of a **cash fund** for the costs of ordinary maintenance and conservation of common goods* "(Cass., ruling no. **17035/2016**).

Source: <https://www.condominioweb.com/rendiconto-senza-registro-di-contabilita-e-illegittimo.19047>

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