



The building administrator can appoint both the lawyer and the technician.

The condominium administrator can appoint a lawyer to stand up in court without the prior authorization resolution of the assembly.

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The Court of Appeal of Catanzaro, with sentence no. **914 of July 28, 2022**, reaffirmed a principle now consolidated in jurisprudence: the condominium administrator can appoint a condominium lawyer without a prior approval resolution of the assembly. It is in fact a power that derives from the more general duty to **protect the condominium** against actions taken by third parties (condominiums included).

Beyond this principle, peacefully recalled by the Calabrian court, the sentence in question is interesting for two other aspects: the extension of this administrator's power also to the appointment of a trusted technician who can support the reasons for the condominium in court; confirmation of the principle according to which the interest in challenging the condominium resolution must be concrete and not abstract.

Let us dwell on these aspects by analyzing the sentence in question which, as mentioned, stated that **the administrator can appoint both the lawyer and the technician**.

Resolution appoints lawyer and technician: the first degree.

One of the condominiums **contested the resolution with which the trusted defender and a technician** were appointed in order to face an ATP judgment in which the condominium was involved.

In the plaintiff's opinion, the resolution would have been passed with a **lower quorum than the law**; therefore, the same had to be canceled.

The first instance trial ended with the loss of the plaintiff, who therefore filed an appeal.

Resolution appoints lawyer and technician: the reasons for appeal.

Before the second instance judge, the appellant repeated the same grievances of the first instance, to which he added that, in the alternative, the **termination of the matter of the dispute was declared** as, in the meantime, the assembly had subsequently been reconvened to ratify the resolution challenged, approving the same agenda but, this time, with the legal majorities.

Resolution appoints lawyer and technician: the decision.

The Court of Appeal of Catanzaro, with sentence no. **914 of 28 July 2022** in commentary, rejected the appeal, confirming the first instance decision.

According to the Calabrian court, although it is correct, as claimed by the appellant, that in the event of a resolution taken in violation of the rules on the **minimum legal quorum** followed by a new resolution on the same agenda, the judge is required to declare **the matter of the to contend**, it is equally clear that the appointment of a technician for the assessment of damages and the appointment of a lawyer on behalf of the condominium **did not require a prior authorization resolution** or ratification of the condominium assembly.

And indeed, according to consolidated jurisprudence of legitimacy, the condominium administrator can appoint a lawyer to stand up in court without a previous authorization resolution



of the assembly (*ex multis* , Cass. Sent . N. 1451/2014; Cass. Sent . . n. 27292/2005, according to which «*in the matter of condominium in buildings, the administrator can resist the challenge of the shareholders' resolution and can burden the relative decision of the judge, without the need for authorization or ratification of the assembly, since the execution and defense of shareholders' resolutions falls within the powers of the same* »).

The interest in challenging the condominium resolution.

The Court of Appeal of Catanzaro also recalled, in the matter of nullity and / or annulment of condominium resolutions, the constant approach according to which the first and fundamental investigation that the judge must carry out concerns the **existence of the interest in challenging the condominium resolution** , which must be **concrete and not abstract** .

In this sense, the peaceful jurisprudence of legitimacy, according to which «*With regard to the appeal of invalid condominium resolutions, the evaluation of the interest in the appeal is posed in terms of instrumentality with respect to the decision on the official detectability of nullity.*

*In fact, given that the judge can and must detect the eventual nullity of the deed underlying the request, it makes no sense, where the party has no interest, for said nullity to be effectively detected. **The interest in challenging the condominium resolution must be concrete** , having to concern the position of **effective advantage** that can derive from the decision of merit, and not just abstract.*

The assessment of its existence is a matter of merit, since only that on the existence of the interest in the abstract can constitute a question of law.

Therefore, if justified in a logically correct and sufficient way by the trial judge, it cannot be criticized in the context of legitimacy " (Cass. Sent. No. 15377/2000).

In the same sense, another sentence: "*The condominium who intends to challenge a resolution of the assembly, due to the alleged erroneousness of the arranged distribution of expenses, **must attach and demonstrate an interest in it** , which presupposes the derivation from the said resolution of an appreciable personal injury , in terms of change in its financial position " (Cass. n. **6128/2017**).*

Borrowing the aforementioned principles to the present case and taking into account that the agenda included the appointment of a technician and a trusted lawyer of the condominium, the appellant, from the possible acceptance of the request for annulment of the contested resolution, not he would have taken no **advantage** .

In short: the appeal would have been useless in any case, precisely because the administrator can appoint a trusted lawyer and technician without having to ask the assembly for authorization.

Source: <https://www.condominioweb.com/amparmi-puo-nominare-sia-lavvocato-sia-il-tecnico.19790>

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