



The appointment of an administrator without the professional requisites (non-graduates and without initial and/or periodic training) is null and void.

For the Court of Bergamo it is useless to try to evade the law by making the administrator appear as acting.

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According to authoritative doctrine (A. Scarpa) the art. 71- bis provision att . cc appears to be a public order rule, due to its impact on the general interests of the community, **as such having an imperative nature** , with the consequence that the relative violation should determine the nullity of the appointment resolution and of the consequent mandate contract stipulated with the designated subject .

The provision is preordained for the purpose of ensuring that condominium building administrators worthy of trust and equipped with experience and ability, for needs of relevance, including publicity ones, so that only the **sanction of nullity can be considered suitable to ensure the effectiveness of the legal prescription** .

With this in mind, **the Court of Padua** affirmed that failure to attend the refresher course makes the appointment of condominium administrator illegitimate in the sense that the administrator will not be able to take on assignments for the following year and that **his appointment is void** (Court of Padua 24 March 2017 no. 818).

According to a part of the jurisprudence, however, the lack of professional training of the condominium administrator, prescribed by art. 71-bis, avail . att . , cc, **is a reason for revocation of the professional assignment** , each condominium being able to appeal to the judicial authority, pursuant to art. 1129 of the civil code .., in the event of failure to resolve on the point by the shareholders' meeting (Court of Verona 13 November 2018, no. 2515; Court of Milan **27 March 2019, no. 3145** ; Court of Verona 13 November 2018).

For this thesis, therefore, article 71-bis, disp . att . it is not a rule of public order.

However, the more rigorous thesis **was recently reaffirmed by the Court of Bergamo (sentence n. 325 of 16 February 2023)** .

Done and decision.

A condominium sued a condominium challenging some resolutions passed by the assembly. The plaintiff, among other things, pointed out that the appointment of the administrator was illegitimate, as the appointee lacked the professional requirements established by law. The condominium specified that the assembly had not appointed an administrator, **but a simple acting person** .

The Court agreed with the plaintiff. According to the same judge, the art. 71 bis att . cc **is a law of public order** which, as such, has an imperative and mandatory nature; as a result, the lack from origin of the requirements set out in art. 71 bis att . cc **entails the nullity of the appointment resolution** , nullity of the assignment which can be objected to by anyone who has an interest and at any time.

In any case, the Court condemned **the attempt by the shareholders' meeting to resort to the ploy of the "acting officer"** only to circumvent the professional



requirements of which the appointee (who has performed all the tasks that the law reserves for the administrator) is never been in possession.

Final considerations.

The thesis expressed by the Court of Bergamo seems more adherent to the legislative dictation which wanted to reserve the complex profession of administrator to truly qualified and up-to-date subjects, to the benefit of the condominium communities.

Please note that the professional requirements are not necessary **if the administrator is appointed among the condominiums of the building**.

In any case, the administrator **cannot be confused with the acting person**, a figure envisaged by paragraph 6 of article 1129 (in the absence of the administrator, on the place of access to the condominium or of greater common use, also accessible to third parties, is affixed the indication of the general information and contact details, including telephone numbers, of the person who performs functions similar to those of the director).

This is an agent who operates within smaller buildings **to which the condominium assembly can assign the person in charge of carrying out one or more specific deals** (also the power to conclude contracts and to act in the name - as well as on behalf - of the condominium: in this sense App . Venice **July 12, 2021 n. 1940**).

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