



## When the administrator is not entitled to repayment of advances on behalf of the Condominium.

The condominium administrator must always avoid promiscuous management in payments made in the interest of the condominium, and if he anticipates expenses, he must do so in a clear and transparent way.

Avv. Sara Occhipinti, legal journalist, mediator 07/03/2023

Thus the **Court of Turin** with sentence no. **428 of 31 January 2023**, rejected the reimbursement request of an administration company, because the advances on behalf of the condominium had been made in cash or with transfers issued from the account of the company itself.

### Advance payment on behalf of the condominium and the administrator's right to reimbursement: the story

An administration company demanded the reimbursement of the expenses advanced over time in the interest of the condominium by the administrator, therefore it turned to the Court obtaining an injunction.

As a basis for the request for an injunction, the company will indicate the deficits of the accounting management.

The injunction was opposed by the condominium, which contested the lack of written proof of the credit and the violation of the obligations arising from the mandate relationship and from the law, in particular due to the **lack of a condominium current account** and for the failure to keep the condominium registry (art. 1130 paragraph 1 n. 6 of the civil code).

According to the defendant of the condominium, the aforesaid irregularities would have affected the accounting results of the management and therefore the existence of the deficits, which form the basis of the injunction. During the opposition proceedings, the company defended itself by producing the bills and the condominium insurance receipt as further proof of credit, attaching that it had made various payments in cash, and others with transfers from its current account.

### No to cash payments on behalf of the condominium

In the opposition proceedings, the Court ordered an accounting technical consultancy which stated:

- the impossibility of tracing the cash payments requested by the administrator and of attributing such disbursements to the administrator's advance;
- the lack of transparency and formality of payments made by bank transfer, given the prohibition of confusing assets and portfolios.

In accordance with art. 1129 paragraph 12 n. 3 and no. 4 of the civil code, writes the Court, the administrator is required to use the condominium current account and is prohibited from conducting promiscuous management.

The rationale of the aforementioned regulations is to guarantee **transparency of management** and at the same time ensure correct information of condominiums, in order to allow constant verification of the destination of their disbursements.

Therefore, according to the Court, the company would have violated the aforementioned rules by making cash payments and transfers from its own account, while it should have correctly issued



the transfers from its current account to that of the condominium, with the causal "advance" and only at that point provide for the payments from the condominium account.

## The principle of law

In deciding the case, the Court of Turin applied the principle of law enunciated by the Court of Cassation, according to which " *the credit of the condominium administrator for the advances of the expenses incurred by him cannot be considered proven in the absence of a regular accounting which, although it does not have to be drawn up with rigorous forms, similar to those prescribed for the financial statements of companies, must, however, be suitable for making the income and expense items intelligible to the condominiums, with the relative distribution quotas, so as to make it possible for the condominium assembly to approve the final report*".

Therefore, on the basis of the CTU, the Court of Turin deemed the administration's bookkeeping to be unregulated and revoked the injunction initially issued in favor of the administration company.

Source: <https://www.condominioweb.com/anticipazione-per-conto-del-condominio-quando-lassociazione-non-ha-diritto-al-rimborso.20361#2>

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