



Failure to convene the heir to the meeting as "entitled party".

The burden of proof of sending the notice of call to the last address known to the administrator, as extracted from the Condominium Registry.

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The condominium assembly **cannot deliberate** unless it is established that **all those entitled have been duly summoned**. This is what is foreseen, in the penultimate paragraph, of the art. 1136 of the civil code which governs the constitution of the assembly and the validity of the resolutions.

entitled to the meeting must be informed of the date and time set for the meeting as well as of the items on the agenda, by means of a notice of call to be delivered or sent in the **manner prescribed by law**.

In particular, the notice of call must be delivered or sent **at least five days before the date fixed for the meeting in first call** according to the following procedures, prescribed by art. 66 available att . cc : by registered mail, certified e-mail, fax or hand delivery. Therefore, other forms of communication are not permitted, such as text messages, WhatsApp messages or non-certified e-mail, it being essential to have the certainty of receipt of the notice by each individual "person entitled".

The **condominium reform law** (Law n.220/2012) to identify the recipients of the convening notice of the condominium assembly replaced the wording "condominiums" with the broader term "**right holders**" with the consequence that posed the problem of **identifying, from time to time, the entitled subjects of the summons**.

The owners of the individual real estate units are certainly "entitled", with the clarification that in the event of co-ownership all the co-owners of the property must be summoned, for whom there is no doubt about their summons, while in other cases it will be necessary to carry out more in-depth investigations in order to identify the person falling within the category of those entitled to be called to the meeting.

A case that often occurs in condominium practice is that of **summoning the heirs of the deceased original owner**. **The heir is, in fact, to all intents and purposes a "person entitled" to be summoned to the condominium assembly**, so that if it were ignored, the resolution could be challenged for omitted summoning.

It will be the responsibility of the defendant condominium **to demonstrate**, in the appeal proceedings thus established, **that it has correctly sent the notice of convocation to the heirs and, in the absence of communications regarding the death of the owner and the consequent change in ownership, that it has sent it to the last address known to the administrator**, as extracted from the condominium registry.

The question was the subject of a recent decision by the **Court of Rome (judgment n. 6942 of 3 May 2023)**.

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The co-owner of an apartment belonging to a condominium complex, who succeeded the original owner, in response to requests for payment of charges accrued for the previous years, sued the condominium asking for the annulment declaration of the shareholders' resolution with which they



had been approved, for the reference period of the disputed claims, the final balance of ordinary management, the subsequent management estimate as well as the final balance of heating management.

He pointed out that he had never received any notice calling the relative meeting and therefore noted the invalidity of the resolution adopted.

The condominium which appeared in court, for its part, highlighted that, awaiting the death of the owner of the real estate unit involved in the case and **not having the administrator received the necessary communications** relating to the change of ownership, the notice convening the meeting it had been sent to the last address known to the administrator, as extracted from the condominium registry.

He pointed out that he had also sent the minutes of the meeting to the same address and that he had subsequently taken action to find the names of the heirs in order to proceed with the recovery of the unpaid condominium charges. **Therefore, he asked for the dismissal of the plaintiff's request .**

The Court, in accepting the plaintiff's request, annulled the shareholders' resolution deeming that the proof, incumbent on the condominium, regarding the actual forwarding of the notice pursuant to art. 66 available _ att . cc, albeit against the original owner of the property.

Concluding remarks

In the present case, the absence of proof regarding the sending of the notice of call to the person to whom the director had sent it was decisive, in the absence of communications regarding the death of the owner and the consequent rotation in the property.

The Court observed, in fact, that the condominium could possibly have **opposed the plaintiff for the failure to communicate the death of the owner** and the consequent transfer of ownership, preliminarily providing proof of having sent the notice of meeting to the last address known to the Administrator, as extracted from the condominium registry.

*The Supreme Court has long affirmed the principle according to which " **it is the responsibility of the heir** to notify the administrator of the death of the condominium and the acceptance of the inheritance, with the assumption of the condominium rights and obligations.*

Consequently "the administrator who is aware of the death of a condominium, until the heirs demonstrate their quality, not having useful elements of reference and not being obliged to do any particular research, will not be required to send any notice" (so Cassation section II sentence n. 6926 of 22 March 2007).

Certainly, this jurisprudence dates back to the period before the 2012 Reform so it does not take into account the specific burdens on the administrator now envisaged by art. 1130 paragraph I no. 6 of the civil code regarding registry offices.

It should be remembered that the Reform has provided for a duty of collaboration for condominiums in keeping the condominium registry. **Hence the obligation for the "heirs" (therefore for those who have accepted the inheritance and have therefore become condominiums) to notify the administrator of the transfer of ownership, failing which, the administrator must acquire the necessary information purposes of updating the condominium registry, charging the cost to those responsible .**

The most recent jurisprudence on the merits , however, has specified that **the administrator cannot be charged with the burden of carrying out searches to ascertain whether the succession opened following the death is legitimate or testamentary**, who are called and whether or not they have accepted the inheritance and this even more so in the event that the status of heir does not result from suitable public documents (see Court of La Spezia n. 175/2021; Court of Cassino no. 717 of 2021)

In this sense, even the Court of Salerno, sentence n. 199 of 2019, according to which " it is the responsibility of the heir to notify the condominium administrator of the death of the condominium

and the acceptance of the inheritance, with the consequent assumption of the condominium rights and obligations, given that, in the absence of such communication, the The heir cannot dispute the defect of omitted summoning to the condominium assembly, as carried out by the administrator on the basis of the data in his possession, nor the monitory provision requested for non-payment of condominium charges"

Basically, **if the administrator does not know the identity of the heirs** , he can limit himself to sending the notice convening the assembly **to the last domicile of the deceased condominium** , or **to the last domicile elected for condominium communications** .

In the present case, the Court annulled the shareholders' resolution due to the absence of proof regarding the sending of the notice of call to the last address known to the administrator, as extracted from the condominium registry in the absence of communications regarding the death of the owner and the consequent change in ownership, noting that in these terms, it would possibly have been opposable to the plaintiff.

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