



The statement without the accounting register is invalid.

A principle of form or, better, of "attenuated formality" must be considered added to the principles of transparency and intelligibility of the final balance sheet.

Lawyer Gianfranco Di Rago 12/18/2023

To the basic principle of intelligibility, given the analytical prediction of the documents of which the final balance must be composed, **a principle of form is added**, which in doctrine has been effectively expressed as "attenuated formality".

Although the condominium statement continues to not be comparable to the corporate balance sheet - for which the law rigidly predetermines the method of displaying the data - nevertheless the analytical forecast of the documents of which it must be composed ends up limiting the discretion of the administrator who writes it.

Therefore, the statement that lacks an **accounting register**, a document expressly provided **for by the art., must be considered invalid. 1130-bis of the Civil Code** and which forms an integral part of it. This is what emerges from the interesting ruling **no. 399** pronounced by the **Court of Lecco** and published on **31 October 2020**.

The statement without the accounting register is invalid. Fact and decision

In this case, a condominium owner had turned to the Court to challenge the meeting resolution with which the statement and budget had been approved, contesting, among other things, the presence of various accounting errors, which undermined its intelligibility, as well as the lack of the elements required by law (i.e. the financial summary, the accounting register and the summary explanatory note of management, also indicating ongoing relationships and pending issues), as well as the undue use of the accrual rather than cash accounting method.

According to the condominium owner, the absence of an accounting register and the failure to prepare the **summary explanatory note of the management** did not allow us to fully understand why subsequent invoices had been included in the contested statement, whether the listed expenses had in fact been paid during the financial year and which payments from the condominiums should refer to the business itself. The condominium, when appearing before the court, had fully contested the opponent's request.

The Court of Lecco, however, accepted the request, making, among other things, extensive reference to a previous decision made between the same parties in relation to the challenge to the financial statement from the previous year. The Lombard judge focused in particular on the reported violation of the criteria set out in **art. 1130-bis of the Civil Code**, a question considered absorbing, and exposed a series of interesting considerations on the point.

Having recalled the constant orientation of legitimacy - according to which the statement must not be drawn up with rigorous forms, similar to those envisaged for company financial statements, it being sufficient that it is suitable to make the income and expenditure items intelligible to the condominium owners, with the distribution quotas - the Court wondered whether it is still relevant in light of the 2012 reform.

Now, according to the Judge, in examining, from an accounting point of view, the provisions that dictate the administrator's obligations and responsibilities (articles 1129 and 1130 of the Civil Code), the inclusion of the obligation to adopt a current account is found of the condominium (art. 1129, paragraph 7, cc) and to **take care of the keeping of the accounting register** (art. 1130, n. 7, cc) in which " *are noted in chronological order, within thirty days from that of the execution, the individual incoming and outgoing movements* ".



The accounting register, which is a cash book (in common accounting terminology it is called "first note" cash or bank), is mentioned again in the art. 1130-bis of the Civil Code which provides the well-known definition of the condominium statement: *The condominium statement contains the income and expense items and any other data relating to the financial situation of the condominium, the available funds and any reserves which must be expressed in such a way as to allow immediate verification.*

It consists of an accounting register, a financial summary, as well as a summary explanatory note on management with an indication of ongoing relationships and pending issues ."

This last rule reports, without defining it, the **financial summary**, which must be understood as a summary of the movements contained in the accounting register and organized into homogeneous groups, essentially a document very close to the balance sheet, in which the funds, reserves and all other information (debits and credits to third parties and to the owners) that cannot be entered in the accounting register.

The law also requires a **summary explanatory note**, a document which must contain the information useful for better understanding the documents described above, with the explicit mention of positive content also relating to the indication of ongoing relationships and pending issues.

In essence, in the summary note the administrator is asked to illustrate the criteria he followed in the financial statement report **and** the most relevant facts of condominium life that occurred during the year (the financial statement must in fact be annual pursuant to art. 1130, n. . 10, cc).

Consequently, according to the Court of Lecco, even after the reform it is certainly acceptable that the key principle in the drafting of the condominium report is the intelligibility of the data presented, which must be understandable to the paradigm of the " **average condominium** ", i.e. that subject not expert in accounting, but driven by the desire to understand.

principle of form is added , which in doctrine has been effectively expressed as "attenuated formality".

Although the condominium statement continues to not be comparable to the corporate financial statement - for which the law rigidly predetermines the method of displaying the data - nevertheless the analytical forecast of the documents of which the statement must be composed ends up limiting the discretion of the administrator who draws it up.

Final considerations

The decision of the Court of Lecco faithfully traces the recent arrivals of the legitimacy jurisprudence. The Supreme Court, with the well-known sentence no. 33038/2018, has in fact clarified that *"the **accounting register**, the financial summary and the summary explanatory note of the management, which make up the statement, certainly pursue the aim of satisfying the interest of the condominium in a concrete knowledge of the real accounting elements reported from the financial statements, so as to dispel the insufficiencies, uncertainties and lack of clarity regarding the account data, and thus allow the expression of a conscious and thoughtful vote in the meeting.*

*When the statement does not consist of a register, summary and note, **inseparable parts of it** , and the condominium owners are therefore not informed about the real financial situation of the condominium in terms of income, expenses and available funds, it may result - regardless of the possible exercise of the concurrent right it is up to the participants to examine and extract a copy of the supporting documents of expenditure - the annulment of the approval resolution of the meeting".*

Moreover, in this as in other similar cases, compliance with the accounting formalities required by law would make the statement more understandable and overcome the alleged accounting inconsistencies often reported by condominium owners.

Source: <https://www.condominioweb.com/invalido-il-rendiconto-privo-del-registro-di-contabilita.21225#2>

GECOSEI by Giuseppina Napolitano

Giuseppina Napolitano