

NEGOZIAZIONE ASSISTITA

ASSISTED NEGOTIATION PROCEDURE

(Legislative Decree No. 132/2014 passed from Law No. 162/2014)

The term describes a voluntary procedure to settle civil litigations introduced by a written agreement (convention) through the parties undertake to cooperate fair to settle a litigation within a fixed period of time and with the assistance of their respective lawyers or of a single lawyer.

The agreement may be reached on advice of both parties or of one party who invites the counterpart to draw up a convention through their lawyer.

THREE TYPOLOGIES

VOLUNTARY (art.2)

COMPULSORY (art.3)

IN MATRIMONIAL MATTERS (art.6)

1. COMPULSORY

The attempt of assisted negotiation has been compulsory since February 9, 2015 for those who wish to:

- Take legal action on the matter of damages relevant to vehicles and floating crafts;
- Submit a claim for a payment of any sort not exceeding € 50,000.00=

unless for matters already subject to compulsory mediation or contractual obligations originating from agreements drawn up between professionals and clients.

Assisted negotiation does not apply to:

- Proceedings for injunction, including objection;
- proceedings of preventive technical evaluation (art. 696 bis code of civil procedure);
- proceedings relevant to compulsory enforcement;
- proceedings in “camera di consiglio” (closed session/chambers);
- civil actions in a criminal trial

INADMISSIBILITY OF CLAIM IN COMPULSORY ASSISTED NEGOTIATION

- inadmissibility must be objected by the defendant, under penalty of expiration, or detected by the judge no later than the first hearing
- should the judge detect that the assisted negotiation has already started but has not finished, the following hearing shall be scheduled after the expiry of the term provided to end the negotiation procedure.
- If the negotiation has not been brought to action, the judge shall grant the parties 15 days to notify the invitation to draw up a convention and shall schedule the following hearing after the end of negotiation.

The trial can continue in the following cases:

- the invitation to negotiation is not followed by acceptance;
- the invitation is followed by a refusal within 30 days of reception;
- the term provided for by the parties in the convention for the end of the procedure has expired.

PHASES OF THE ASSISTED NEGOTIATION

INVITATION TO NEGOTIATE

POSITIVE OR NEGATIVE REPLY OF THE ADDRESSEE OF THE INVITATION

DRAWING UP AND SIGNING OF THE NEGOTIATION CONVENTION

DEVELOPMENT OF THE NEGOTIATION

CONCLUSIVE PHASE

INVITATION TO NEGOTIATE

The invitation to draw up the convention must state the subject matter of the litigation; must include the advice that a lack of reply to the invitation within 30 (thirty) days from the reception or a rejection, may be valued by the judge for the legal expenses and towards what is provided for in articles 96 and 642, first paragraph, of the Code of Civil Procedure.

Lawyer certifies the signature of the Client who writes the invitation.

LEGAL EFFECTS:

As of the moment of the notification of the invite to draw up a convention of assisted negotiation

- the effects of the document instituting the proceedings affect the prescription as well as a complaint (art. 8);
- decadence is prevented by the date itself only once (art. 8).

FORM:

The invitation is a written act including four specific elements:

- 1) definition of the object of litigation;
- 2) advice relevant to the consequences of a rejection to adherence or of lack of communication;
- 3) signature of the party defended by the lawyer;
- 4) certification of the signature carried out by the lawyer.

CONTENT OF THE LITIGATION

The convention of negotiation shall state the content of the litigation; it will be sufficient to include information that allows the counterparty to understand the matter of the litigation, with no further details of all the implications of the litigation.

The specification of the content of the litigation shall be especially detailed in the event that the purpose of the invitation is to interrupt the prescription and decadence.

The convention of assisted negotiation cannot concern non-disposable rights or labor law.

ESSENTIAL ELEMENTS FOR THE VALIDITY OF THE INVITATION:

- assistance of a lawyer;
- written form;
- explicit wish to start a negotiation on a matter;
- signature of the party;
- certification of the signature of the party from the lawyer.

NON-ESSENTIAL ELEMENTS FOR THE VALIDITY OF THE INVITATION:

- formal advice on the consequences to a rejection or to the lack of response to negotiate;
- specification of terms allowed to accept or reject (lacking which there is the 30-day law term).

REPLY OF THE ADDRESSEE OF THE INVITATION

The addressee of the invitation to negotiate may:

- a) do not reply;
- b) reply rejecting the invitation;
- c) reply accepting the invitation.

- Both the lack of response and the rejection may be assessed by the judge towards legal expenses and toward what is provided for in articles 96 and 642, first paragraph, of the code of civil procedure.

Consequently, the suggestion is to reply with a circumstantial rejection if the negotiation is not the chosen option.

Who replies accepting the invitation to negotiate shall cooperate with bona fide and loyally to reach the amicable settlement of the dispute.

Who accepts is also bound to confidentiality.

CONTENT OF THE CONVENTION

The contents are not established previously by the law, so the parties are free to agree the modality and the procedure that they will adopt during the assisted negotiation.

TERMS OF NEGOTIATION

The terms cannot be less than ONE month and not over THREE months, extendible for a further 30 (thirty) days if agreed by the parties.

AGREEMENT BETWEEN THE PARTIES

If the negotiation is successful the parties will draw up an agreement.

Signed by the parties and by their lawyers, the agreement is a document is a title for execution and for the registration of mortgage.

The authenticity of the signatures of the parties must be certified by their lawyers who also need to certify the compliance of the agreement with the mandatory laws and to public order.

If with the agreement the parties conclude one of the contracts or carry out an act subject to transcription, in order to carry out the latter, the signing of the minutes needs to be authenticated by a suitable public officer.

The agreement reached with the negotiation have the same effect as those of the decision of the Court.

The agreement following assisted negotiation is fully enforceable.

LAWYERS' OBLIGATIONS IN ASSISTED NEGOTIATION

- Duty of loyalty and integrity;

- Duty of confidentiality

Breaching such duties is a disciplinary offence.

ASSISTED NEGOTIATION IN MATRIMONIAL MATTERS

Through assisted negotiation, the spouses may separate or dissolve the marriage, provided that the parties are defended by at least one lawyer, one per spouse.

In presence of children, the Public Prosecutor will be forwarded the agreement within 10 days, and will authorize it only if it is suitable to the interest of the children. Should - instead - the prosecutor decide that the agreement does not meet the interest of children, he will forward it within five days to the President of the Court who, within the deadline of maximum thirty days, will arrange an hearing with the parties.

Once the agreement has been authorized, it has the same value as the judicial decision.

Once the negotiation has been signed, the lawyer shall forward a certified copy, within 10 days, to the Superintendent Registrar of the municipality where the marriage was registered or recorded for all the executions needed (registration in the register of births, marriages and deaths; notes on the act or marriage and birth; notification to the Registry office).