

A condominium consists of 25 units located within a single building. In order to protect aging electrical and plumbing systems located in the common areas within the building, the board of the condominium association has adopted a reasonable rule that prohibits an owner of a condominium unit from installing or replacing a washer or dryer in the unit. The declaration that created the condominium is silent with regard to the matter.

An owner wants to replace an existing combination washer/dryer appliance in her condominium unit.

Can the association enforce this rule against the owner?

- A. No, because the declaration that created the condominium is silent with regard to the installation of a washer or dryer within a condominium unit.
- B. No, because the rule seeks to dictate what the owner can do within her own condominium unit.
- C. Yes, because the board adopted the rule to protect the building's electrical and plumbing systems.
- D. Yes, because the board has the power to adopt rules restricting the use of individually owned property within the condominium.

Explanation:

Main types of common-interest communities

Property owners' association	Property owners must, as consequence of property ownership, belong to association & pay dues to it <i>or</i> Property owners in real-estate development must pay for use/maintenance of property held in common by individual owners, but association membership is optional
Condominium	Created by state statutes by filing declaration (or master deed) & plat with recording office in condominium's locality Declaration & bylaws set out rights & obligations of unit owners & fix shares for allocating expenses, taxes, voting rights Each owner is responsible for his/her own mortgage
Cooperative	Typically consists of land & one or more buildings owned by corporation that leases individual residential units to shareholders Resident is tenant who also owns one or more shares of stock in corporation & is prohibited from transferring interest separately from lease Cooperative has blanket mortgage

A **condominium** is a **common-interest community**—ie, a real-estate development in which individually owned lots or units are burdened by a covenant that imposes an obligation to pay dues to an association. These communities, typically acting through a board, have the power reasonably necessary to manage common property and carry out functions set forth in the declaration or granted by statute. This includes the **following powers**:

To **levy assessments** against individually owned property and **charge reasonable fees** for services or use of common property

To **manage and protect common property**, including making substantial alterations, improvements, and additions to such property

To **adopt reasonable rules** to govern the use of common and individually owned property **to protect the common property** (this is an **implied power**)

Here, the board of the association adopted a reasonable rule prohibiting the installation or replacement of a washer or dryer within a condominium unit. The rule seeks to protect the electrical and plumbing systems located within the building's common areas. Since the association has the implied power to adopt such rules, it can enforce this rule against the owner of the condominium unit.

(Choice A) A condominium association has the implied power to adopt reasonable rules governing the use of individually owned property if the rule seeks to protect common property. This is true unless that power is expressly limited by the declaration or a statute. Therefore, the declaration's silence regarding washer/dryer installations will not prevent the association from enforcing this rule.

(Choice B) The owner of a condominium unit generally has the freedom to use the unit as he/she sees fit. However, that use is subject to reasonable restrictions (as seen here).

(Choice D) The board has the implied power to adopt this rule to protect the common property, but it does not have the broader power to adopt *any* rule restricting the use of individually owned property within the condominium.

Educational objective:

Common-interest communities (eg, condominiums) have the implied power to adopt reasonable rules to govern the use of common and individually owned property to protect common property in the community.

References

Restatement (Third) of Property: Servitudes §§ 6.4–6.7 (Am. Law Inst. 2000) (setting forth the powers of common-interest communities).