August 18, 2016

Dear Owners,

You will soon be receiving, via regular mail, two documents recently reviewed and approved by the COA Board – both related to short-term vacation rentals at Market Street Lofts. I’ve attached both documents to this correspondence as well, but felt it important to provide a little background and rationale for the Board’s recent decision leading to the distribution of these documents.

You are undoubtedly aware of websites like Airbnb, HomeAway and VRBO – on-line companies that connect people seeking short-term accommodations with people offering short-term accommodations, in a spare room, a condo, or a house. You may have used these services for your own vacation plans, for weekends away, etc. These types of services have grown tremendously in recent years, both in terms of popularity and in the number of guests that have booked accommodations through the on-line portals. There have been news reports of the downsides of such services as well – damage to property, rentals being used for illicit activities, and guest’s general disrespect of the communities and neighborhoods where these short-term vacation rentals operate.

Thankfully, Market Street Lofts has not experienced these headline-grabbing downsides. In fact, the known short-term rentals in our building have provided great accommodations delivered by great hosts to guests wanting to enjoy what we all enjoy at Market Street Lofts – unique living space in a vibrant neighborhood, walkable access to great shops, restaurants, and bars, and close proximity to all that Chattanooga and our incredible landscape can offer.

In our due diligence review of the short-term rental industry as it relates to Market Street Lofts, the Board has been made aware of issues that warrant our consideration. We have been advised that short-term rentals are considered commercial enterprises (businesses) and as such, are not in compliance with our governing documents which limit units to single family residential purposes. We have also learned that some, including our, insurance contracts do not extend coverage to the guests of short-term rentals, exposing the COA and you as an association member to potential liabilities not covered by insurance. Details of these issues are presented in the following pages.

Singularly or in combination, these issues present legal and financial risks that the Board was not willing to accept on behalf of you, our ownership group.

As such, the Board authorized distribution of an official notice (the last page in this document) to all owners in the building, indicating that owners of short-term rentals in the building are not in compliance with our Master Deed and the actions these owners must take to regain compliance.
Decisions like these – ones that adversely impact our neighbors and friends - are never easy. But given the risks identified, the decision had to be made. For the sake of our community and our ownership group, we are requiring a cease of short-term rentals in our building. This restriction will also extend to the new owners that are to join our community in the coming months.

Ultimately, this is your COA – the limitations that our Master Deed places on short-term rentals can be refined, softened or lifted. There may be insurance companies that will write contracts on buildings which contain short-term rentals. It is my hope that the Board’s decision and this letter presents an opportunity for friendly and open dialogue across the ownership group about this and other issues affecting the building.

We may live in a historic building governed by documents more than a decade old, but the future at Market Street Lofts is ours to define.

As your neighbor and COA President, I’m proud to call 1301 home...

Jay Lauer
August 17, 2016

VIA U.S. MAIL & EMAIL (GSmth@RoofCurb.com)

Market Street Lofts COA, Inc.
Board of Directors
Attn: Mr. Greg Smyth, Treasurer
363 N Industrial Blvd.
P. O. Box 648
Trenton, GA 30752

In re: Short-term vacation rentals at the Market Street Loft Condominiums

Dear Greg:

You asked me to look at the Master Deed and Declaration of Covenants and Restrictions for the Market Street Loft Condominiums and give you an opinion regarding the use of Units for short-term vacation rentals (“STVR”). Based on the reasons I will discuss in more detail below, I strongly recommend that the Board of Directors use its power to immediately prohibit STVR use of any Unit within the Market Street Loft Condominiums.

1. STVRs are excluded from the definition of “Residential Unit” and are specifically prohibited by the Master Deed.

As we previously discussed, your Master Deed defines “Residential Unit” to mean “a Unit to be used and occupied independently as a residence by a single person or by a family members [sic], all of whom are related to each other by blood, adoption or marriage.” Initially, the Residential Units were located on the second and third floors of the building, but the first floor is now entirely residential, so there are no longer any Commercial Units in the building. Your Master Deed specifically prohibits commercial activities in Residential Units.
“Residential Units may be used only for single family residential purposes. Residential Unit Owners shall not use their Units, the Common Elements or the Limited Common Elements for or in connection with the conduct of any trade, business, professional or commercial activity of any kind or nature whatsoever.”

It is clear to me that STVR is a commercial use, but in the event there is any argument regarding this point, the expected changes to STVR oversight in Hamilton County will resolve that. The proposed changes, if adopted, will require owners using their property for STVR purposes to obtain Certificates and post these Certificates along with other information, including a business license number, in the STVR premises. Certainly if the property owner must obtain a business license in order to operate an STVR, it can hardly be considered anything other than commercial activity.

Again, STVRs are specifically excluded from the definition of a Residential Unit and clearly prohibited by the provisions of the Master Deed.

2. STVRs expose all Unit Owners, not just those renting out their units, to increased liability.

Homeowners insurance typically requires the insured properties to be owner-occupied. Certainly, use of any property for STVR is incompatible with this requirement and could result in the denial of coverage for damage done to any particular unit. This is a concern because damage done to any particular unit that is not covered by insurance could potentially affect the value of other units; of far greater concern, however, is the Association’s insurance coverage.

The Master Deed requires the Association to maintain coverage for the building, including the Common Elements. I have discussed STVR use in the condominium context with an insurance agent familiar with the issue and have confirmed my concern is legitimate; it is highly unlikely that the Association’s insurance carrier would provide coverage for damage done by STVR tenants. Also, if the Association’s insurance carrier discovers the STVR use – either through a claim for damage caused by STVR tenants or otherwise – it is possible coverage will be canceled. If there is no insurance coverage, then repairs required by the activities of STVR tenants will cost all unit owners in the form of potentially significant assessments.

In the event the Board refuses to enforce the commercial use prohibition in the Master Deed, the Board needs to be absolutely certain that the Associations’ insurance will cover any damage done by STVR tenants. If additional coverage is needed, premiums will almost certainly go up, also resulting in additional assessments to all Unit Owners, even those who do not use their Units for STVR purposes.
The STVR use by some Unit Owners exposes all Unit Owners to the possibility of additional assessments either in the potential repair of uninsured damages or increased premiums for appropriate coverage.

3. **STVR use presents a safety concern for all Owners.**

This concern is really self-explanatory, as there is no way to know what type of person(s) STVRs will bring into your building. These STVR tenants are given access to all Common Elements – including elevators, stairwells and hallways within the building – and, as I believe has already occurred at the Market Street Lofts, may invite or allow countless unknown others onto the Property.

Property owners who wish to use their single-family properties for STVR purposes when they are not present risk only their personal property in the event of an unsavory tenant. Property owners who wish to use their condominiums for STVR purposes risk not only their personal property, but the physical safety and the property of other owners who will be sharing the same entries, exists, hallways, elevators, and other common elements with these unknown STVR tenants and their guests.

Please also keep in mind that Section 16 of the Master Deed places certain requirements on Owners before leasing their Unit. Any Unit Owner proposing to lease his Unit is required to provide the Board with written notice, including the name and address of the proposed Tenant, and must receive prior written consent from the Board. The Master Deed also requires that the Association be a “co-signatory on all Leases for the sole purpose of having the right to enforce rights under the Lease, and, with or without such co-signature, the Unit Owners hereby vest in the Board the right to evict any Tenant, with or without Unit Owner consent, who violates the Lease, this Master Deed, the Bylaws, or applicable law.” The provisions of Section 16 are mandatory and the Board should review them and begin following them if they do not already do so.

As a Board member, please carefully consider whether you want to be responsible for reviewing, approving, co-signing and enforcing STVR leases. There is limited information you can gain about potential tenants prior to approving STVR leases and, in the event of any problems with STVR tenants, dissatisfied Unit Owners will certainly turn to the Board members who approved the leases for remedies. As a Board member, you are indemnified by the Association, but that will not save you the time, trouble and stress of dealing with these complaints.

For the Condominium Association as a whole, STVRs create serious problems with little to no benefit. Only those Unit Owners who choose to use their property for STVR purposes gain anything at the risk and expense – potentially enormous expense – of other Unit Owners. Again, I recommend that you strongly encourage your Board to enforce the prohibition of STVRs and, in the event the Board refuses to do so, then it certainly must follow the mandatory provisions regarding review, approval, co-signing and enforcing leases.
I hope that I have answered all of your questions. If not, or if you have any further questions or concerns, please feel free to contact me.

Sincerely,

Susie Lodico

Susie Lodico
For the Firm
SL:jld
August 17, 2016

VIA U.S. MAIL & EMAIL (GSmyth@RoofCurb.com)

Market Street Lofts COA, Inc.
ATTN: ALL OWNERS
c/o Market Street Lofts COA Board of Directors
363 N Industrial Blvd.
P. O. Box 648
Trenton, GA  30752

In re:    Short-term vacation rentals at the Market Street Loft Condominiums

To Whom It May Concern:

Please be advised that the Master Deed and Declaration of Covenants and Restrictions for the Market Street Loft Condominiums prohibits the use of Residential Units as Short-Term Vacation Rentals ("STVR"). If you are presently using your unit for this purpose, you must cease immediately and remove your unit from any website advertising STVRs, including but not limited to HomeAway, Airbnb, and VRBO.

In addition to violation of the provisions of the Master Deed, continued STVR use of any unit will result in non-renewal and possible cancelation of the COA’s insurance coverage.

If any STVR use is discovered after fifteen (15) days from the date of this letter, please know that the Board considers this matter very serious and will use any remedies available to it under the Master Deed, By-laws, or the Tennessee Horizontal Property Act, including emergency dispossession.

Sincerely,

Susie Lodico

Susie Lodico
For the Firm