



SNDA – What is It and Why is It Important?

Bartow B. Duncan, III

What is an SNDA?

An SNDA, or subordination (the “S”), non-disturbance (the “ND”) and attornment (the “A”) agreement, is an agreement between the lender providing financing to the landlord and a tenant of the property.

Subordination and Attornment (The “S” and “A”). Most landlords use financing in order to develop or purchase property. As a condition to securing such financing, most lenders require tenants to subordinate their leases to the mortgages or security deeds and, further, to attorn (or recognize) the lender as the new landlord in the event of a foreclosure, or a deed in lieu of foreclosure. Put simply, a lender wants written assurance that its loan is of a higher priority than the property’s leases, and if the lender elects to foreclose on its loan, the rent stream from those leases will continue to flow.

Non-Disturbance (The “ND”). Tenants should use best efforts to condition this subordination to and attornment of the lender on the receipt of a non-disturbance agreement from the lender (which is a similar (and reciprocal) right to the attornment of the lender). It is lender’s recognition of the lease coupled with a covenant not to disturb tenant’s tenancy. In the absence of non-disturbance language, if the lease is subordinate to the lender’s lien, then at foreclosure of landlord’s property, the lender’s lien can also foreclose all subordinate items, including all subordinate leases. Given that the leases are of a lower priority than the lender’s loan, tenants want to be assured that their leases will not be terminated by a lender in the event of foreclosure.

Why is an SNDA important?

In the absence of an SNDA or similar document, the lender and tenant do not have privity of contract (or a written contractual relationship). Landlord and lender establish privity through the loan documents, and landlord and tenant establish privity through the lease document. If there is no written agreement between the lender and the tenant, what happens if the lender forecloses on the property? Does the tenant recognize the lender as its new landlord? Likewise, in such an event, does the lender (as the new landlord) recognize tenant’s lease and tenancy? With an SNDA, both parties contractually recognize each other. As a result of tenant’s recognition of lender in the SNDA, the tenant pays the rent due under the lease to the lender as the new landlord – maintaining the rental stream is crucial for the property’s continue success. Likewise, because of lender’s ability to foreclose all items subordinate to its lien, including all leases, the establishment of privity between the lender and tenant is crucial to the tenant, as it serves as a recognition of the tenancy and an agreement not to disturb (or foreclose) the lease at the time the lien of the mortgage is foreclosed. Otherwise, tenant could be in full compliance with the lease, yet lose its lease through no fault of tenant.

Once it is agreed upon that an SNDA will be entered into by the parties, the parties negotiate the particulars. There are classic lender and tenant positions which are beyond the scope of this review; but, in general, the tension of these negotiations relate to lender’s desire to supercede certain provisions of the lease, which is in direct contrast to tenant’s position that the lease not be disturbed by the lender.

Authors and Contributors

Bartow B. Duncan, III
Of Counsel, Atlanta Office
404.873.8186
bartow.duncan@agg.com

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Atlanta Office
171 17th Street, NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office
1775 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006

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