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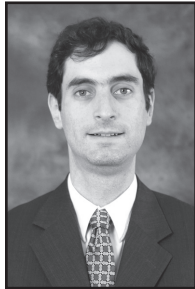
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SNDA connects lender, tenant

At some point during a commercial lease, the tenant may get a letter from its landlord asking the tenant to sign and return a document called a "Subordination, Non-Disturbance, and Attornment Agreement." The title is enough to create confusion with the tenant. The tenant may be thinking, what is this document, what does it do, and why do people have to use words like "attornment"? Nevertheless, the tenant should carefully review and evaluate this document as it affects the tenant's rights and, if properly drafted, also provides protection for the tenant.

This agreement, typically called an SNDA, governs the relationship between a lender and the tenant at a property. The common link to these parties is the landlord. The landlord and tenant have entered into a lease. The lease allows the tenant to use and occupy the premises in exchange for payment of rent and contains other obligations. If the landlord has a loan on the property, the landlord and its lender usually have entered into a number of documents including either a deed of trust or a mortgage. The deed of trust or mortgage is the document where the landlord pledges the property as collateral for the loan and allows the lender to foreclose and force the sale of the property in the event of a loan default. As the lender is not a party to the lease and the tenant is not a party to the loan documents, the SNDA is a document that connects the lender and the tenant and spells out their relationship.

The purpose of the SNDA



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is to specify what happens if the landlord defaults under its loan documents with the lender. The lender and the tenant are parties to all SNDAs, but sometimes the landlord also signs the document. The starting point in evaluating the SNDA should be the lease, as it may identify certain requirements for the SNDA.

The three key components of the SNDA are the subordination, the non-disturbance and the attornment.

■ **Subordination.** Since, the lender does not want the lease to interfere with its rights under the deed of trust or mortgage in the case of foreclosure, it would like its mortgage or deed of trust to be a superior interest in the property ahead of the lease. The lender can reach this goal by having the tenant subordinate the tenant's interest in the property to the lender's deed of trust or mortgage. This is especially important for the lender in the event that the lease already exists for the property before the lender makes the loan on the property. This subordination provides the lender with a superior interest in the property and allows the lender to name the tenant in the foreclosure action. As a result, the lender is not required to recognize the lease and, instead, can independently determine

if it wants to keep the tenant or remove the tenant after the foreclosure. The lender may want to remove the tenant if the lease is not desirable, perhaps because of below market rents.

■ **Non-disturbance.** The problem for the tenant with agreeing to subordinate the tenant's interest in the property to the lender's interest is that the tenant could be "thrown out" when the lender forecloses. When the lender's deed of trust or mortgage is superior to the lease, if a foreclosure occurs, both the landlord's and tenant's interests in the property are extinguished. This has the effect of negating the lease, and the tenant would have no right to continue to occupy the premises. To avoid this unpleasant result, the tenant should obtain a non-disturbance agreement from the lender. The non-disturbance provision provides that after a foreclosure, so long as the tenant continues to make its rent payments and perform its other obligations under the lease for the benefit of the lender, the lender will recognize the tenant's ability to remain in the premises and treat the lease as being in force between the lender (as the new landlord) and the tenant. Said another way, the lender will "not disturb" the tenant in the event of foreclosure.

Sometimes a tenant may receive only a subordination and attornment agreement, but this type of document lacks the main provision beneficial to the tenant, the non-disturbance portion.

■ **Attornment.** The attorn-

ment provision of an SNDA is the tenant agreeing to recognize the lender (or any other purchaser at the foreclosure sale) as the new landlord under the lease following the foreclosure. The tenant "attorns" to such new owner as the landlord. The lender wants to make sure that the tenant continues to perform all the tenant's obligations under the lease despite the foreclosure, and this clause accomplishes that task.

■ **Other agreements.** Sometimes an SNDA will contain obligations of the parties other than the three key provisions from which the SNDA gets its name. For example, it is common for the lender to require the tenant to give the lender copies of the notices that the tenant gives the landlord. This can help the lender monitor (and potentially fix) problems.

Another common provision of an SNDA is that the lender will not be responsible for defaults of the original landlord under the lease arising before the lender takes over as the new landlord following a foreclosure. There also may be a provision that requires the lender's consent to any amendments to the lease.

■ **Conclusion.** An SNDA contractually ties together the tenant and the lender for a property and governs what happens in the event the landlord defaults under the loan with the lender and the lender seeks foreclosure. When properly drafted, an SNDA is a valuable agreement that provides certainty and protects both the lender and the tenant in such a situation.▲