



## **What is an SNDA?**

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I. In its most simple form, an SNDA is a written agreement between a mortgagee and the tenant of property upon which the mortgagee has a lien which subordinates (or confirms the subordination of) the lease to the mortgage lien, or obligates the mortgagee to honor the lease if a foreclosure occurs, and obligates the tenant to recognize the mortgagee as the landlord under the lease if a foreclosure occurs. The SNDA is the agreement which establishes the relationship between the mortgagee and the tenant in the event of a foreclosure.

A. Subordination – The general common law rule is that a lease is terminated upon the foreclosure of a prior mortgage or deed of trust. A mortgage is prior to a lease entered into after the mortgage is recorded and subordinate to a lease entered into before the mortgage is recorded. The subordination clause of the SNDA changes the relative priority of the mortgage and the lease: the tenant agrees that the lien of its lease will be subordinate to the lien of the mortgage. Or, the subordination clause confirms and clarifies the relative priorities: the tenant confirms that its lease is subordinate to the mortgage in accordance with the subordination language contained in the SNDA.

B. Non-Disturbance – In exchange for the tenant's subordination and as a protection for the tenant from the consequences of subordination, the tenant requires that the mortgagee agrees not to disturb the tenant's possession and occupancy under the lease so long as the tenant is not default under the lease.

C. Attornment – In exchange for the mortgagee's non-disturbance agreement and as a protection for the mortgagee from the consequences of subordination, the mortgagee requires that the tenant agrees to acknowledge, recognize and treat the mortgagee as the new, substituted landlord under the lease.

II. The lender requires an SNDA for many reasons, the most basic of which are to ensure that the lender's mortgage lien, security interest and rights in and to the property are first among all other security or property interests which include the tenant's interest under the lease; to protect lender from responsibility or liability for the conduct of or default by the landlord under the lease; to obligate the tenant to honor its lease commitments and not abandon the lease if the lender is forced to foreclosure on the property; to obligate the tenant to provide notice to the lender of any default under the lease that might permit the tenant to terminate the lease and allow the lender an ample opportunity to cure such default in order to prevent a termination of the lease; to amend

unsatisfactory lease terms or provisions which cannot be amended in a simple estoppels certificate; and to exculpate the lender against any personal liability to the tenant, limiting lender's liability to its interest in the property.