



Chris Griswold, P.C.

News From the Firm

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Message From Chris....

SNDA's (Subordination, Non-Disturbance and Attornment Agreements). What are they? What do they do? Who needs them? When? Good stuff. See more below (and don't forget to click on my Facebook or YouTube links below to also see my short video on this material).

Understanding SNDA's

Question #1: So what is an SNDA?

Answer: It's an agreement entered into by and between the tenant and landlord's lender that basically allows the tenant to remain operating in their leased premises should their landlord become insolvent. In return for the lender's agreement not to disturb the tenant's operations, the tenant agrees to "attorn" to the lender as its new landlord. Lastly, the tenant agrees to subordinate (i.e., subject) their leasehold estate interest to the lender's security interest in the leased premises thus making the lender's securitization in the leased premises superior to tenant's leasehold interest in the leased premises.

Question #2: So what is the main benefit of having an SNDA in place for a commercial tenant?

Answer: It will ensure that the commercial tenant's business operations won't be negatively affected by a landlord's financial distress.

Question #3: Do SNDA's change the nature of the new landlord/tenant relationship existing between tenant and lender?

Answer: Probably so. SNDA's usually have certain "carveouts" in place which will either diminish the obligations and/or enhance the rights of the lender under this new landlord/tenant relationship – depending upon the relative bargaining power of the parties. For example, if the lender is in a stronger bargaining position than the tenant, the lender (as the new LL) will have additional time (on top of that granted to the original landlord under the lease) to cure certain defaults of the original landlord. Furthermore, if the lender has the stronger bargaining position, the SNDA will usually contain language that lender will not be responsible for certain defaults of the original landlord which occurred during the original landlord's march towards bankruptcy. The document may also limit the repairs and maintenance that lender is required to perform (as compared to the repairs and maintenance that the original landlord had to perform under the lease). The document could also attempt to diminish the lender's liability to tenant as relating to property casualties and personal injuries which occur on the demised premises or the shopping

center. Accordingly, it's always a good idea to consult counsel prior to entering into a subordination agreement.

Question #4: When should a commercial tenant think about entering into the SNDA agreement with the landlord's lender?

Answer: Remember, an SNDA is only useful if it is entered into prior to your landlord's insolvency – you can't enter into one after landlord's insolvency and back date its effectiveness to an earlier point in time. Accordingly, the SNDA issue is one to address, if at all possible, up front during the negotiations which precede the execution of the lease. Otherwise, the sooner the better....

What My Clients Are Saying

“Chris Griswold is a good business attorney whom I've used often and much through the years, for both my business and personal needs, and whom I'd gladly refer to anyone. He's creative, prompt, eager to help and very competent. He's good at what he does, he has fun doing it, and it shows up in his work through his good problem solving skills. I look forward to a continued relationship with Chris.”

Edward F. Wells / President, Wells Nelson & Associates / Oklahoma City, Oklahoma

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