



Chris Griswold, P.C.
A Business Transactions Firm

NEWS FROM THE FIRM

MARCH 2009

Memberships

- OK, TX & American Bar Associations
Licensed in all OK & TX State Courts
- International Council of Shopping Centers
- Commercial Real Estate Council of Oklahoma City
- Urban Land Institute
- Oklahoma Renewable Energy Council
- CCIM Chapter of Oklahoma

Links & Resources

Commercial Real Estate Council of OKC
www.crecokc.com
International Council of Shopping Centers
www.icsc.org
Urban Land Institute
www.uli.com
Oklahoma Renewable Energy Council
www.ocgi.okstate.edu.orec

Contact Information

315 W. Edmond Road
Edmond, OK 73003
405.229.7595 (Direct Dial)
405.844.3380 (Fax)
chris@chrisgriswoldpc.com
www.chrisgriswoldpc.com

Message from Chris....

It's no secret that things are financially in a state of flux - AIG, GM, Chrysler, Wachovia, etc. The result? Money is tight and some landlords are against the ropes or may be in the near future. The concern? If you're a tenant or even a landlord who is holding under a ground lease, you have a lot to lose if your landlord goes under. Is there something you can do to protect yourself? The following article on SNDA's (i.e., Subordination, Non-Disturbance and Attornment Agreements) should ease your mind....

SNDA's - A Safety Net for the Smart Tenant

So you're sitting at your desk opening the mail one morning and you open a notice letter from your landlord's lender. It says that your landlord hasn't paid rent in 6 months and the building in which your space is located is being foreclosed upon. You finish reading the letter and look up at your space which you've occupied for over twenty years..., the same space which you've put thousands of dollars (of your own money) into for flooring, carpentry, lighting fixtures and other niceties which your customers expect from a high-end retailer. It occurs to you that you stand to lose everything you've worked so hard to achieve. You would feel a lot better had you entered into an SNDA with your landlord's lender. Accordingly, I want you to walk away knowing three, basic things about SNDA's:

First, what is an SNDA? It's an agreement entered into by and between the tenant and the lender that 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 (i.e., recognize) the lender as its new landlord. Moreover, the tenant agrees to subordinate (i.e., subject) their leasehold interest to the lender's security interest in the leased premises thus making the lender's claim to the leased premises superior to that of tenant, even if the lease pre-dates the mortgage.... So, from the tenant's viewpoint, an SNDA ensures that the tenant's business operations won't be negatively impacted by a landlord's financial distress.

Second, will the SNDA change the nature of the landlord/tenant relationship? Probably. Lenders usually try to negotiate SNDA's in such a way so that lender's responsibilities (e.g., maintenance and repairs) are diminished and their rights (e.g., time of showing the building to prospective purchasers) are enlarged as compared to those originally set forth in the lease. Why? The big picture is that lenders don't want to be the landlord for long since they're in the banking business - not the real estate business. But while the lender (as landlord) is trying to sell the building, they want to be on the hook for as little as possible. Accordingly, watch out for the fine print that the bank's attorney sends over for signature....

Third, when should a tenant enter into an SNDA? An SNDA is only useful if it is entered into prior to your landlord's insolvency. In other words, a bank will not usually agree to enter into an SNDA with a tenant after the landlord has already gone bankrupt. 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....

"We have worked with Chris Griswold in negotiating all aspects of our lease agreements and highly recommend his work. He has always been diligent, thorough, quick and effective. Additionally, he has a keen understanding of the truly critical aspects of leases and how best to address them."

Scott Osuna
Which Wich Franchisee / Dallas, Texas