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# Making Sense of SNDA

Subordination, non-disturbance and attornment agreements are critical to funding

**COMMERCIAL MORTGAGE BROKERS** who keep themselves knowledgeable of the various parts and processes of their deals often are better positioned to serve clients and cultivate new business. This knowledge should cover the various documents and requirements that are typical in commercial mortgage deals. For example, one critical document in deals that are secured by income-producing properties is the subordination, non-disturbance and attornment agreement (SNDA).

Commercial mortgage brokers should not overlook or underestimate this document. It is an agreement between three parties: the lender, the tenant and the borrower (who is also the owner and landlord). Brokers play a liaison role between these three parties, and therefore understanding of the importance of this agreement is paramount. Here is a quick look at the important provisions that make up the SNDA.

## Subordination

Lenders typically are concerned with subordination because they want to ensure that the mortgage is secured by a priority interest that is superior to all other interests. In other words, lenders want all other interest holders in the property, including tenants with leasehold interests, to be subordinate or inferior to the lender's interest. In the event of borrower default, lenders that have a priority interest may foreclose on the property to satisfy the borrower's unpaid debt. Having tenants' signature on the SNDA means that tenants agree to subordinate their leasehold interest in the property to the lender.

## Non-disturbance

The non-disturbance segment is important

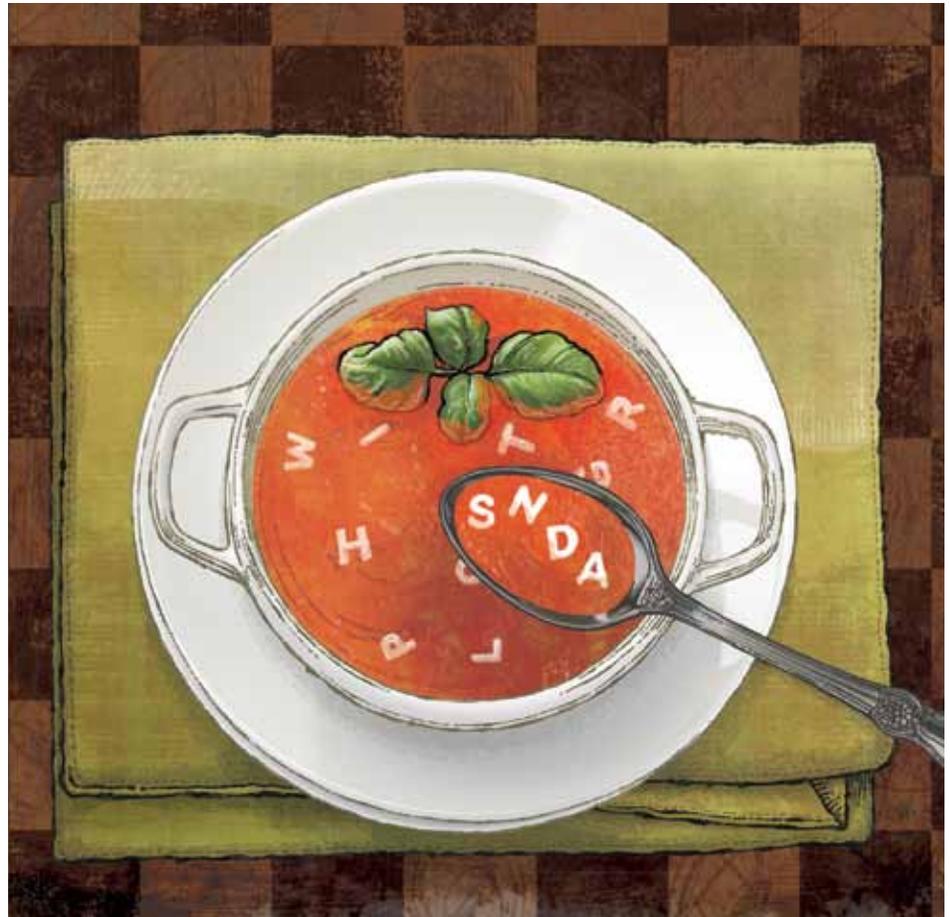


Illustration: Dennis Wunsch

to tenants who desire to remain in the property as per their leases, even if the borrower (the landlord) defaults on the mortgage. Tenants' agreement to be subordinate to the lender allows the lender to foreclose on the property and terminate the lease. For tenants, having their leases wiped out by foreclosure could mean major expenses, headaches and losses, including:

- **Build-out funds**
- **Benefits of the lease**, including long-term

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advantageous rent

- **Goodwill created in the tenant's space location**
- **Time and money** related to relocating to a new space

Non-disturbance is central to the SNDA agreement because it ameliorates this risk for tenants. When lenders sign this agreement, they agree that in return for tenants' agreement to subordinate their leasehold interest, the lenders will not to disturb the tenant's leasehold interest as long as tenants abide by the lease terms and pay rent to the lenders.

### Attornment

Attornment is important to lenders and tenants because it is their recognition of the existence of a landlord-tenant relationship between the lender as landlord and tenant, even though the lender did not sign the

lease. Attornment normally occurs when the lender forecloses on the landlord and takes possession of the property. Attornment allows the landlord-tenant relationship with its respective obligations and duties to continue despite the change in the landlord identity from the borrower to the lender.

Commercial mortgage brokers should advise their clients to closely read the SNDA agreement to determine whether or not the lender fully steps into the landlord's shoes and assumes all landlord obligations that are included in the lease toward the tenants. Some SNDA agreements absolve lenders from certain landlord obligations under the lease.

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In working with borrowers, commercial mortgage brokers should recognize the

importance of the SNDA agreement and educate their clients about its significance. In many cases, lenders will not provide the loan funds without having this agreement signed by all involved parties. In addition, they may require future tenants to agree to be subordinate to the lender's priority interest.

With that in mind, commercial mortgage brokers who have a thorough understanding of this document can explain its nuances to their clients and help them meet lenders' requirements. They also should encourage borrowers to include SNDA-related clauses in tenant leases. By offering this type of sincere guidance, assistance and balanced advice, brokers may find themselves with a wealth of repeat-and-referral business. ●

*Disclaimer: The above is for informational purposes only and does not constitute legal advice.*