



## What are they, and why do landlords require them?

Estoppel certificates and Subordination and Non-Disturbance Agreements (SNDAs) are the legal documentation that assures the rights of all parties are upheld. Tenants should not be concerned, but rather should welcome the documents with open arms. Estoppels and SNDAs are usually initiated by the lender; however, well written documents serve the interest of the tenant just as well.

Typically there are three parties affected by a commercial lease: the landlord (owner of the property), the tenant, and the lender (if the property is financed). Most commercial real estate is financed, which means a lending institution holds a mortgage on the property. In addition, there is often a tenant(s) who leases the same property. Therefore, there are multiple liens on the asset and multiple parties involved, each with certain legal rights. Estoppel certificates and SNDAs are documents required by lenders to assure the rights of all parties involved are properly documented, and the landlord simply passes the lender's requirements along to the tenant

## Estoppel Certificate

An estoppel certificate is a certification from a landlord and a tenant that outlines the terms and conditions of the lease. The purpose of the estoppel is to benefit third parties not privy to the landlord-tenant relationship. Lenders are looking to verify specific information such as the amount of rent being paid, lease terms and duration and any predetermined lease extensions, amount of security deposits, expenses that each party is responsible for, and assurance there are no defaults or oral representations under the lease by either party. The estoppel certificate offers protection for the lender and brings all parties together to verify all aspects of the current lease arrangement.

Most lenders will have their own form of estoppel certificates that they will require the borrower and their tenants to complete. While it will not change the existing lease terms, it usually will include specific language that may create new terms between the tenant(s) and the lender under certain circumstances such as a foreclosure. This protects both the lender and tenant should the landlord fail to meet their obligations and are removed from the equation.

## Subordination and Non-Disturbance Agreements (SNDAs)

Another document typically required is the SNDA agreement, which actually is three agreements in one.

- The “subordination” portion of the document permits the lender (mortgagee of the property), whose lien is junior or subordinated to the tenant's (usually because the lease was recorded before recording the lien of the mortgage), to become superior to the lien of the lease. Lenders typically insist that their loans be a “first lien” and landlords are aware of this requirement. So, if landlords plan on financing their property they need to include a provision that makes all leases subordinate.



- Lenders also need another agreement along with subordination, to ensure that tenants can't walk away from their leases in the event of a foreclosure. This agreement is called an "attornment," which is especially necessary in the states that extinguish a lease once the property has been foreclosed (although this is not the rule in the majority of states). The attornment agreement creates a contractual bond between tenant and lender, pursuant to which the tenant agrees it will recognize the lender as landlord in the event of a foreclosure.
- The agreement that protects the tenant is called a "non-disturbance." A non-disturbance agreement permits the lease to stay in force so long as the tenant is not in default. Therefore, the tenant's rights under the lease are maintained regardless of the agreements established between the lender and landlord. The tenant should insure that the lender agrees to assume all of the obligations of the landlord. The SNDA should include a provision requiring the lender to complete any unfinished construction begun by the landlord as a pre-condition to collecting rent. This provision might also include a similar covenant for casualty and condemnation repairs. The SNDA should be a separate document from the lease (in case there is any claim that the SNDA was extinguished as part of the lease in a foreclosure) and the tenant should also insist upon the right to record the SNDA.

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