

# The Legal Strategist

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TEXAS ESOTERIC FACTS

Commercial leases often contain what is called a subordination, non-disturbance, and attornment agreement, or SNDA. SNDAs are agreements between a tenant and a landlord that lays out certain rights of the tenant, the landlord, and other third parties, such as the landlord's lender or a purchaser of the property. There are three parts to an SNDA: the subordination clause, the non-disturbance clause, and the attornment clause. Read on to find out why a tenant or landlord would want to include an SNDA in their commercial lease.

The Republic of Texas had its own embassy-like building in London. When it joined the rest of the United States in 1845, the officials skipped town without paying their rent.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in my newsletter, which can be viewed on [The Legal Strategist](#) tab of my web site, please contact my office at 713.526.1883.

Scott Barrett

FEATURE TOPIC: **COMMERCIAL LEASE SNDA EXPLAINED**

Many commercial leases for business owners or management have subordination, non-disturbance and attornment types of agreements in the contractual documentation. These are between the tenant that rents the building or land and the landlord. These agreements explain the rights afforded to the tenant, the landlord any other third parties involved to include the lending institution anyone else that has bought the property. This document or process is shortened to SNDA and has the three parts of the subordination, non-disturbance and attornment clauses. How these affect the renter, leaseholder or landlord depends on different factors and the relationship to each.

**Subordination Clause Explained**—The subordination clause part of the SNDA has a direct impact on the tenant as he or she agrees as per his or her signature to permit his or her interest in the property rented to become secondary to any interest of a third-party financial lender. Landlords with an interest in a property usually seek to find whatever financial security for a commercial building or land through a lease with a tenant. Most lending agencies involved in these deals require that the tenants that are part of the lease and have signed the subordination clause to become secondary or junior in involvement with the lease holding interests with the mortgage interests that the lender has become included in with the property.

The third-party lender is given the option to terminate any lease if a commercial property is foreclosed through a subordination clause in a contract. The question then becomes why this is beneficial, and the tenant may consider not agreeing to this. Unfortunately, most leaseholders of a commercial building or land have no choice in the matter. However, in protecting the interest in the lease holding, the tenant should ensure that the SNDA document has a non-disturbance clause. This may mean a lawyer is used to protect his or her interests and ensure documentation is either altered slightly or has certain terms included before signing.

**Non-Disturbance Clause Explained**—The subordination clause is usually not optional, but in protecting his or her interests, the non-disturbance term should be included in the SNDA. This would provide the tenant with the right to stay on the land or in the building that is on the lease provided he or she does not default. This is possible in most circumstances even if the property in question is sold, foreclosed or a similar concern arises. This clause protects the tenant and his rights on the premises even if the landlord cannot keep mortgage payments satisfied with the lending agency. This is of great importance to a commercial tenant whose business is derived from the location. Having this clause in the contract depends on how well the tenant is able to convince the landlord, or the lawyer that has been hired may make convincing arguments.

**The Attornment Clause Explained**—An attornment clause in a contract is what has the tenant acknowledging that a new owner of the property, through purchase or acquiring it, is the new landlord he or she will be dealing with in the future. This is to ensure in and SNDA that there is a clause in which to honor a new owner of the property who may have obtained the building or land through a foreclosure, sale or other means. This means if the previous owner could not pay the mortgage, the lending institution initiated foreclosure, auctioned the property and sold it to a new individual, or there was a sale because the landlord prior was unable to keep it. This clause transfers all interests from the other landlord to the new one so the remainder of the lease is kept intact no matter how he or she became the new owner.

If you would like more information on this or any other topic relating to a commercial lease, please contact [Scott Barrett](#) to set up a consultation.