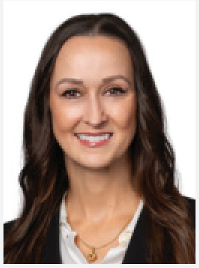
Subordination, Non-Disturbance, and Attornment Agreements (SNDAs): A Practical Framework for Mortgage Lawyers—and a Question for the Next Cycle



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Introduction

SNDAs are often closing deliverables, privately negotiated to substitute for uncertain priority outcomes under recording and foreclosure law. This article explains when an SNDA is needed, why the ‘who signs’ question is an underwriting decision, where negotiation time is most productively spent, and how AI-enabled workflows may change what counts as ‘best practices’ without displacing professional judgment.[1, 2, 7]

What an SNDA really is and why the label matters less than the function

Most definitions say an SNDA is a tri-party agreement among tenant, landlord, and lender that governs what happens to a lease if the lender forecloses. This is an accurate but incomplete statement. The SNDA’s real job is to replace what some people refer to as SNDA “default rules”, with what the parties agree will happen if the landlord’s mortgage is foreclosed. Without an SNDA, the default rule would determine wither the lease is senior or subordinate to the mortgage. Default rules, in real estate law, generally refers to the legal principle that determines the priority of rights when various interests exist on the same property. One of the most common default rules is the “first in time, first in right” principle. These default rules are an unpredictable mix of competing interests between a landlord, tenant and a lender, over recording priorities and common law foreclosure doctrine. The SNDA provides a workaround for that by giving the parties to it a negotiated priority regime that can be underwritten. While lease negotiations focus on landlord–tenant economics, loan closings focus on borrower–lender credit. N either interest naturally centers the third party’s risk until there is a default, and by then, it is too late because leverage and time are scarce.[1, 2]

That functional lens of the SNDA also provides some clarity for why the ‘S’ in the acronym “SNDA”, which stands for “subordination,” without the ‘ND’ part, which stands for “non-disturbance,” and for why both of those, without the “A” part, which stands for “attornment,” is frequently unacceptable to sophisticated tenants. Subordination, alone, maximizes lender optionality but externalizes tenant continuity risk —risk that tenants often cannot price and lenders cannot ignore when rents are underwritten as collateral value. Conversely, non-disturbance, without meaningful attornment, can undermine a successor landlord’s ability to stabilize cash flow after foreclosure. In practice, the SNDA is a bargain around continuity: continuity of possession for the tenant in exchange for continuity of rent and control for the lender and its successors.[2, 4]

When an SNDA is needed and the underwriting logic behind who signs

In a multi-tenant property, the question is seldom whether SNDAs are conceptually appropriate; it is which tenants must be bound into the lender’s foreclosure plan. It is generally acknowledged that lease related documents (e.g., estoppels and SNDAs) exist for the protection of the lender, primarily, because leases are considered an important part of the collateral package. For example, a senior lease can bind a foreclosure purchaser to below-market economics or restrictive operational covenants, while a wiped-out lease can eliminate a valuable rent stream. The SNDA is the mechanism that allows those outcomes to be aligned with underwriting, rather than chance.[2]

Timing is not merely administrative. Lender-side commentary cautions that post-closing SNDA delivery reduces leverage and invites delay. Once the loan has funded, tenants know the lender’s urgency has passed; redlines that were once a closing condition become a negotiation with fewer practical consequences. That dynamic tends to yield either weaker forms (to obtain signatures) or incomplete coverage (because the tenant never signs). Either result is a silent underwriting change.[3]

The four clauses that decide most SNDA negotiations

Most SNDA markups look long, but the substantive fights cluster. First is the scope of non-disturbance: foreclosure, deed-in-lieu, and mortgagee-in-possession scenarios should be covered if continuity is the bargain. Second, is successor liability: lenders and foreclosure purchasers want to avoid inheriting pre-foreclosure defaults or funding obligations that cannot be priced. Third, is amendments without consent: lenders resist being bound by post-loan amendments that change economics or risk. Fourth, is notice and cure: tenants want meaningful remedies; lenders want a chance to protect collateral and prevent value-destructive lease terminations.[2, 4]

The American College of Real Estate Lawyers (ACREL) provides a free downloadable version of the Tenant's Form Subordination Non-Disturbance and Attornment Agreement for use in practice (even for non-members). ACREL's tenant form is instructive because it reflects the 'classic' trade: non-disturbance conditioned on the absence of uncured tenant default, plus attornment, plus subordination. Lender forms typically broaden successor-liability disclaimers and limit offsets, prepaid rent recognition, and the enforceability of unconsented amendments. The practical drafting task is to preserve what each side truly needs,—tenant business continuity and lender stabilization capacity, —without importing liabilities that a successor cannot price.[4]

Trends in process and law that change the SNDA conversation

Deal teams increasingly standardize SNDA requirements in loan documents and pair them with estoppel delivery obligations—not because standardization is inherently lender- or tenant-friendly, but because it is process-friendly. It reduces variance, narrows late-stage negotiation, and forces the real issues to the surface earlier.[2, 3]

Separately, legal backdrop changes can alter execution mechanics. The Revised Code of Washington, RCW 64.04.010, clarifies that leases do not require acknowledgment, to be effective, but recordation of a lease or memorandum still requires acknowledged signatures. For transactions that rely on recorded memoranda, the notary step still matters, even if the underlying lease execution is streamlined. Local commercial leasing regulation can also shift leverage indirectly; Seattle's Ordinance 126982 limits certain security instruments and personal guaranties for covered tenancies, affecting how parties think about credit support in the lease stack that the lender underwrites.[9, 10, 11]

The future: AI, legal war chests, and the next category of SNDA disputes

The market is moving from bespoke SNDA drafting toward institutional playbooks: standard positions, fallback clauses, and rationales that can be deployed quickly. In that sense, an SNDA practice increasingly resembles a legal 'war chest'—not a single form, but an organized set of options linked to risk tolerances. AI may accelerate that trend. Generally, the commercial real estate industry has acknowledges that generative AI is transforming the speed in which business is being done. For example, generative AI can allow for precise lease abstraction and a specified purpose for a compare of drafts of leases and loan documents, while playbook commentary stresses that outputs become reliable only when grounded in structured rules and guardrails.[7, 8] For those less familiar with those terms of art, generative AI is output that is the product of queries, original content in response to an original request, such as text, images, video, audio or software code. Playbook commentary in the AI world refers to a predictable, reusable, executable response, the kind that a team relying on a standard input method could reuse to produce a reliable output or generate an expected result without guesswork, unpredictability or error. At the same time, ethical constraint is tightening. ABA Formal Opinion 512 emphasizes competence, confidentiality, communication, and fee reasonableness in connection with generative AI use, and underscores that lawyers remain responsible for the work product. In SNDA practice, that translates into an operational rule: AI can triage, extract, and flag; however, counsel must verify, qualify and decide. The more persuasive an AI output appears, the more it should be treated as a hypothesis requiring traceability back to the source document.[5, 6]

A useful question for mortgage lawyers is therefore not whether AI will be used in SNDA workflows, but what the disputes will look like once it is employed. If lease and SNDA provisions become structured dat —searchable, comparable, and auditable—will the next generation of conflicts turn less on what a clause means and more on who controls the narrative that is driving the review, negotiation posture, and exception approvals? In other words, when playbooks become assets and prompts become work product, will competitive advantage shift from drafting artistry to governance: the ability to prove that one's process was competent, consistent, and explainable when the foreclosure cycle tests today's paper tomorrow?[5, 7]

Appendix (Illustrative Language)

Non-Disturbance. So long as Tenant is not in default under the Lease beyond any applicable notice and cure period, Mortgagee (and any Successor Landlord) shall not terminate the Lease or disturb Tenant's possession of the Premises in connection with any foreclosure of the Mortgage, deed-in-lieu, or other exercise of remedies.[4]

Attornment. If Mortgagee or any purchaser at foreclosure succeeds to Landlord's interest, Tenant shall attorn to such successor as landlord under the Lease, and the Lease shall continue in full force and effect as a direct lease between Tenant and such successor.[4]

Conclusion

The SNDA's core function is to convert the uncertainty of default rules into predictable foreclosure-era outcomes. Most negotiations turn on four provisions: non-disturbance scope, successor liability, amendments without consent, and notice/cure. Timing is leverage; post-closing SNDA delivery trades away negotiating power and increases closing risk. AI is most valuable when it operationalizes a playbook (e.g.—abstraction + deviation detection + explainability—). Stated differently, AI creates the most value when an attorney has confidence not only in the output generated, but also in the process used. A reliable AI workflow follows a defined business process, drafting standards, helps detect unusual situations, and provides sufficient transparency to allow an attorney to understand its reasoning. It is much less helpful when it drafts without governance, writing without oversight, controls or accountability. An attorney using AI in the creation of an SNDA must ensure that the output is legally sound and accurate. Because the attorney ultimately remains responsible for the final work product, AI-generated provisions should be independently reviewed and validated to ensure they accurately reflect the intent of the parties and the desired outcome of the transaction (depending on your client's objectives).

End Notes

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9 *Wash. Rev. Code § 64.04.010 (2024), https://app.leg.wa.gov/rcw/default.aspx?cite=64.04.010.*

10 *Mike Tarantino, Seattle Commercial Landlords Must Take Action To Comply With Commercial Guaranty Ordinance, Davis Wright Tremaine (June 24, 2024), https://www.dwt.com/blogs/land-use-development/2024/06/new-guaranty-law-for-seattle-commercial-landlords.*

11 *City of Seattle Ordinance 126982, https://clerk.seattle.gov/~archives/Ordinances/Ord_126982.pdf.*

12 *Wendy A. Hansen & Briana A. Burgess, Understanding Subordination, Non-Disturbance and Attornment Agreements (SNDAs), Eversheds Sutherland (Sept. 19, 2024), https://www.eversheds-sutherland.com/en/global/insights/understanding-subordination-non-disturbance-and-attornment-agreements; Diana Ovsepian, Negotiating Triparty Hotel Agreements To Withstand Risk, Sidley Austin LLP (May 1, 2025), https://www.sidley.com/en/insights/publications/2025/05/negotiating-triparty-hotel-agreements-to-withstand-risk.*