

TEXAS ANNOTATED SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

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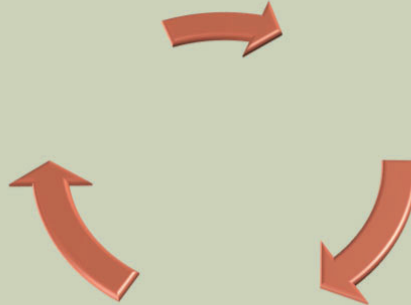
I. INTRODUCTION

- A. Overview of SNDAs
- B. Importance of SNDAs
- C. Before the SNDA: Leverage, Leases and Loans
- D. The Role of the Landlord

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A. OVERVIEW OF SNDAs

- SNDAs are typically three-party agreements.*



*Don't forget the landlord/borrower.

- SNDAs are most commonly needed in the context of commercial transfers, acquisitions and refinancing.
- Delivering SNDAs can become a very expensive task depending upon the transaction.

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B. IMPORTANCE OF SNDAs

- SNDAs are a mechanism by which parties are able to plan for the worst case scenario—FORECLOSURE.
 - SNDAs contractually modify lien positions, lease rights and party obligations.
 - SNDAs allow parties to avoid state law default rules.
 - Little case law guidance
 - State laws vary greatly
 - Recording statutes
 - Lien theory v. title theory
 - Notice (actual v. constructive)
 - Risks are difficult to calculate
 - As the likelihood of foreclosure increases, so does the importance of an SNA.
- In one word, SNDAs mean: CERTAINTY

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