



Dear Stewart Partners,

Thank you for joining us again this week. We hope you enjoyed the Fourth of July festivities with friends and families, notwithstanding the less than ideal cookout and bbq weather. In this week's Mid-Week Update, we are providing some important information on SNDAs and the Execution of Documents in a Foreign Country.



The Importance of SNDAs

An SNDA, short for Subordination, Non-Disturbance and Attornment Agreement, is a tripartite agreement involving three parties: the landlord/borrower (mortgagor), the tenant, and the lender (mortgagee). SNDAs have several purposes, one of the more important ones being they serve to connect the lender with the tenant.

The rights of a tenant under an existing lease with a recorded Notice of Lease are paramount to the rights of a lender whose interests are created after the lease. Lenders generally will not accept a title insurance policy that contains an exception for rights of tenants under an existing lease and will require that such rights be made subordinate to the insured mortgage.

An SNDA's primary purpose is to protect the interests of both the lender and the tenant. For the lender, it provides assurance that they can foreclose on the property without being hindered by the tenant's lease rights. Simultaneously, the tenant gains protection by securing their rights to continue to occupy the premises, undisturbed, under the terms of their lease, even if landlord defaults on the mortgage.

The core elements of an SNDA are as follows:

1. Subordination – this clause establishes the priority of liens on the property. It means that the tenant agrees that their leasehold interest in the property will be subordinate to the mortgage lender's interest.
2. Non-Disturbance – the non-disturbance provision guarantees that as long as the tenant fulfills its obligations under the lease, the lender will not disturb the tenant's possession and use of the property. This protects the tenant from being evicted or having their rights infringed upon due to a mortgage default by the landlord.
3. Attornment – the attornment clause requires the tenant to recognize and acknowledge the lender as the new landlord in the event of foreclosure. This ensures

that the lender can step into the landlord's shoes and enforce the lease terms with the tenant, maintaining the rental income stream.

SNDA's are typically recorded if a notice or memo of tenant's lease is recorded on the land records. Recording the SNDA in the public records provides notice to outside parties and establishes the priority of interests, protects the tenant's leasehold rights, and provides clarity regarding the lender's rights in case of foreclosure. While recording an SNDA is necessary in some instances, recording is not required for an SNDA to be effective. Please contact your local underwriting counsel for more specific circumstances under which recording an SNDA is necessary or advisable.



Execution of Documents in a Foreign Country

When sellers or buyers meet with the closing agent/attorney to sign their closing documents, it is easy to take for granted the formalities that are required for properly executing a deed or mortgage and other closing documents. Even if the signer is in another state, usually they have access to a notary public at their bank or a local business, and with careful instruction from the closing agent to the notary, the requirements are easy for the signer to complete. However, early and careful planning is needed to ensure the required services and facilities are available so that closing will not be delayed when the signer is in a foreign country.

All the same formalities which are required in a particular state are required when documents are executed out of the country. For example, for documents to be validly recorded with the land evidence records in the State of Connecticut, the documents must be in writing, properly acknowledged, and attested by two (2) witnesses. Please be sure to confirm the requirements of your particular State when sending documents to be executed in a Foreign Country. A proper acknowledgment can generally not be achieved by simply executing the documents before a foreign notary. To obtain a proper acknowledgment of a document, it is best to execute the document at the American Embassy located in the country in which the signer is located. The notaries at the American Embassy are not considered "foreign". This requires early planning, as the embassies and consulates generally require an appointment for this service, and often are booked several weeks out. Therefore, your client should contact the Embassy well in advance to schedule the notarial service. No seal or further authentication is required if executed at the Embassy.

It is also possible to have a document notarized by a local foreign notary, but an additional step is required. Specifically, the notarization must be authenticated for use in the United States. In countries that are party to the [Hague Apostille Convention](#), this is a simplified process that does not involve Embassies or Consulates. In times past, figuring out the various unique legal requirements of multiple nations was difficult. The confusion not only slowed down the processing times, but also led to widespread fraud that was hard to detect. In response, Apostille laws were agreed upon by a large number of countries and signed at a Hague convention in 1961. See the [Hague Conference website](#) for complete information on the Apostille process. Apostilles authenticate the seals and signatures on public documents.

If your document is acknowledged by a person authorized to perform notarial acts by the laws or regulations of a foreign country, such as a Notary Public, Judge, Clerk or Deputy Clerk of any court of record, then such acknowledgment must contain the official seal of the person performing the notarial act.

Notwithstanding the foregoing, your State may have certain statutory provisions and Standards of Title sections that sanction and authorize the notarial act. Pursuant to the Connecticut General Statutes, Uniform Recognition of Acknowledgment Act, Section 1-57 et seq., if the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if the official seal of the person performing the notarial act is affixed to the document or the title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

If you have any questions or concerns regarding a document executed in a foreign country, contact your local underwriter for assistance.

Applicable Statutes/Standards of Title:

Connecticut: 47-5a, 1-36, 1-57, 1-58 and Standard of Title 9.5

Massachusetts: Real Estate Bar Association Title Standard 16 and Massachusetts Deed Indexing Standards, Item 2

Maine: 4 M.R.S. § 1914

New Hampshire: 456-B:6 and Title Standard 5-10

Rhode Island: 34-12-4 and 42-30.1-12

Vermont: Title 26, Chapter 103 and Title Standard 9.1



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