



What are Estoppel documents?

When purchasing a commercial real estate property, especially tenant-occupied property, I frequently get the same questions from clients.

“What are these subordination, non disturbance, and attornment and estoppel documents that my lender is asking for?”

This post will address the subordination, non-disturbance, and attornment document. A separate post in our Real Estate blog section addresses Estoppel.

We'll use an example to explain Tenant Estoppel or just, Estoppel, in its most basic form.

Lets say Buyer has an executed purchase agreement to buy a small retail strip mall property featuring 4 tenant spaces for \$1 million dollars. Buyer is using his local bank to finance this transaction. The local bank tells Buyer that in order to finance his transaction, they will need an SNDA and estoppel docs from the Tenants. What is an estoppel agreement?

A Tenant estoppel agreement (Estoppel) is basically a snapshot of the current state of the Lease between the Landlord and Tenant. Tenant answers questions such as, what is the monthly rent, is Tenant current on their rent, does Tenant pay any taxes/insurance/CAM charges, does Tenant have any upcoming rent abatements, does Landlord owe Tenant any improvements still unfinished on the Property, and other questions about the Lease.

This gives helpful information, especially to Buyer, to determine whether the Lease and the Property is as the Seller is representing.

A common example of where Estoppel uncovers hidden issues is Seller will represent they have a property for sale with a listing as following:

“Great property for sale! Cashflows at XX/mo, Tenant triple carries and minimal Landlord involvement required!”

Sounds like a great deal right? Well, after receiving back an executed estoppel, Tenant is actually 2 months behind on rent and it turns out, Seller never installed that new HVAC system they promised to Tenant in the original Lease!

If Buyer accepts the Property as is, Buyer would be accepting the responsibility to install that new HVAC system. Unfortunately, this makes the deal much different than represented originally. Lender's require this estoppel for obvious reasons. If they're lending money, they want to be sure they're lending money for what is being represented by Seller. Unfortunately, estoppel tends to kill more deals post executed agreement than any other item other than physical inspections.

I always advise retaining counsel to review and draft any estoppel documents, so you know what you are getting when you purchase a Property. If you need help with any real estate transactions, we are happy to help. Give us a call at King and Huffines: Attorneys at Law PLLC at 724-242-0230 or reach out to us via email at rking@kinghuffineslaw.com

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