

Big Apple Tenants Clamor For Greater Lease Protection



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More New York tenants are asking for lease security provisions when negotiating leases due to concerns over the financial stability of the buildings they occupy. The security provisions used include subordination, non-disturbance and attornment-or SNDA--agreements and aim to guarantee the rights of tenants in the event of drastically changing market conditions, foreclosure or other financial problems for the landlord.

While these provisions have typically been reserved for office tenants leasing more than 100,000 square feet, retail tenants leasing as little as 5,000 square feet are also now requesting the provisions. This trend applies especially to Class B space. "When landlords acquired property in 2006-2007, they estimated a certain amount of revenue from tenants. And they were getting loans based not only on leased space, but on leasing projections as well. A lot of these buildings were hit in the crash and went to servicers," said **James Emden** , vice chairman of **Colliers** .

It is difficult to quantify how much these requests have gone up since they vary based on the size of the tenant, the landlord and the class of building. Much of the trend, however, can be traced to the market's low rental rates: as tenants search for better deals, landlords are left facing higher vacancy rates, which makes their properties seem riskier to prospective renters, Emden said. He cited 575 Lexington Avenue, which went into special servicing in March after owner **Silverstein Properties** defaulted on its \$325 million loan because of decreased cash flow. At the time it was purchased in 2006, it was 92% occupied. Today, it is between 80-85% occupied and tenants looking at the space likely would ask for a SNDA, he noted.

Ronald Kremnitzer, partner at **Pryor Cashman** , said he has recommended that more clients break deals if a landlord is not willing to provide an SNDA, especially retail tenants, which lease smaller spaces but pay a lot to renovate them. "Without question, if I had a retail tenant who was going to spend several thousand dollars to build out a space, I would recommend they go somewhere else if the landlord wouldn't provide an SNDA," he said. In the current market, landlord instability isn't a theoretical risk, he added.

On the landlord side, both Kremnitzer and Emden agree that lease guarantees are less of an issue for large landlords such as **Brookfield Properties** , **SL Green Realty Trust** and **Vornado Realty Trust** . Among smaller players, however, today's tenant-friendly market has forced SNDAs to become accepted as more common practice, in spite of the often lengthy process of obtaining them from their lenders.