



The Power of a Simple Notice

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New York Real Property Law § 291-f provides that where a recorded mortgage, or an instrument relating to such mortgage, contains an agreement referring to § 291-f and restricting the mortgagor's right, without the mortgagee's consent, to cancel, abridge or otherwise modify tenancies, subtenancies, leases or subleases in existence at the time of the agreement, or to accept prepayments of rent due thereunder, such restrictions become binding on tenants and subtenants only after they have been provided with written notice of the agreement accompanied by a copy of the relevant text. Any cancellation, modification or prepayment made by a tenant or subtenant after receipt of such notice, without the mortgagee's consent, is voidable at the option of the mortgagee.

The statute further provides that for tenants or subtenants who acquire their leasehold interest by assignment after July 1, 1960, the recording of the mortgage or related instrument itself constitutes sufficient notice of the restrictive agreement. Accordingly, an assignee of an existing leasehold estate takes subject to the mortgage restrictions by virtue of the recording, without the need for separate written notice. The statute also contains two express carveouts: 1) it does not apply to leasehold estates primarily for the residential purposes of the tenant; and 2) it does not apply to leasehold estates with an unexpired term of less than five years at the time of the restrictive agreement.

In commercial real estate finance practice, loan documents frequently incorporate these statutory requirements by obligating the borrower to deliver § 291-f notices to tenants promptly after or simultaneously with the relevant closing. The purpose is to ensure that tenants are formally bound by the mortgage's lease-related covenants, so that any subsequent lease modification, termination or rent prepayment made without the lender's consent will be ineffective as the lender. Borrowers are often required to provide evidence of delivery, and lenders typically reserve the right to send the notices directly if the borrower fails to do so. In some transactions, delivery of § 291-f notices is a condition precedent to funding.

The statute thus operates as the bridge between the mortgage covenants negotiated in loan documents and their enforceability against tenants. By requiring written notice to existing tenants, and by deeming recording sufficient notice to later assignees, § 291-f ensures that lenders' consent rights over lease modifications and rent prepayments are preserved, while also providing tenants with clarity as to the restrictions that govern their leases.