

DRAFT

FOR DISCUSSION ONLY

**PROPOSED AMENDMENTS TO
UNIFORM COMMERCIAL CODE
ARTICLE 2A – LEASES**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

**AMERICAN LAW INSTITUTE TENTATIVE DRAFT
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With Reporter's Notes and Prefatory Note

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ON UNIFORM STATE LAWS

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Prefatory Note.

Article 2A is presented as a series of amendments. The charge to the Drafting Committee with regard to Article 2A generally limited its authority to proposing changes where appropriate to incorporate changes also being proposed for Article 2 and to proposing changes necessitated by revised Article 9. The Preliminary Comments to the draft of Article 2A for the most part attribute the proposed amendments to either Article 2 or Article 9 without explaining the underlying rationales. Those explanations may be found in the Preliminary Comments to the Article 2 draft and in the Official Comments to revised Article 9. In a few instances (*e.g.*, the definition of “finance lease”), the Committee was authorized to make changes that go beyond Article 2 or Article 9, and in these instances the Preliminary Comments reflect the reason for the change. It is anticipated that the package of amendments to Articles 2 and 2A will be presented to the state legislatures as a single package, and consideration will be given to coordinating these enactment efforts with the enactment efforts for revised Article 1.

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PART 1

GENERAL PROVISIONS

§ 2A–103. Definitions and Index of Definitions.

(1) In this Article unless the context otherwise requires:

(a) “Authenticate” means i) to sign, or ii) to execute or adopt a record with the intent to sign, and to attach to or logically associate with the record an electronic sound, symbol, or process.

Preliminary Comment

This definition conforms to amended Article 2.

~~(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him [or her] is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.~~

Preliminary Comment

The definition of this term is in Section 1-201(9), as amended by the Article 9 revision process.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

1 (c) "Commercial unit" means such a unit of goods as by commercial usage is a
2 single whole for purposes of lease and division of which materially impairs its character or
3 value on the market or in use. A commercial unit may be a single article, as a machine, or
4 a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or
5 carload, or any other unit treated in use or in the relevant market as a single whole.

6 (d) "Conforming" goods or performance under a lease contract means goods or
7 performance that are in accordance with the obligations under the lease contract.

8 (e) "Conspicuous", with reference to a term, means so written, displayed, or
9 presented that a reasonable person against which it is to operate ought to have noticed it.
10 A term in an electronic record intended to evoke a response by an electronic agent is
11 conspicuous if it is presented in a form that would enable a reasonably configured
12 electronic agent to take it into account or react to it without review of the record by an
13 individual. Whether a term is "conspicuous" or not is a decision for the court.

14 Conspicuous terms include the following:

15 (i) with respect to a person:

16 (A) a heading in capitals equal to or greater in size than the
17 surrounding text, or in contrasting type, font, or color to the surrounding text of the same
18 or lesser size;

19 (B) language in the body of a record or display in larger type than
20 the surrounding text, or in contrasting type, font, or color to the surrounding text of the
21 same size, or set off from surrounding text of the same size by symbols or other marks
22 that call attention to the language; and

(ii) with respect to a person or an electronic agent, a term that is so placed in a record or display that the person or electronic agent cannot proceed without taking action with respect to the particular term.

Preliminary Comment

The definition of “conspicuous”, which conforms to amended Article 2, may be moved to revised Article 1.

(f) “Consumer” means an individual who leases or contracts to lease goods that, at the time of contracting, are intended by the individual to be used primarily for personal, family, or household purposes.

Preliminary Comment

The definition of “consumer”, which conforms to amended Article 2, may be moved to revised Article 1.

~~(e) (g) “Consumer lease” means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose [, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$ _____] between a merchant lessor and a consumer.~~

Legislative Note: Present Article 2A has a bracketed provision allowing States to insert a dollar cap on leases designated as consumer leases, amended Article 2 defines “consumer contract” and does not include a dollar cap in the definition. Some States have not included a dollar cap in present Article 2A and States which have adopted a dollar cap have stated varying amounts. If a State wishes to include a dollar cap, the cap should be inserted here. Any cap probably should be set high enough to bring within the definition most automobile leasing transactions for personal, family, or household use.

(h) “Delivery” means the voluntary transfer of physical possession or control of goods.

1 **Preliminary Comment**

2
3 The definition of “delivery” as it relates to goods, which conforms to amended Article 2,
4 may be moved to revised Article 1, which already contains a definition of the term as it applies to
5 an instrument, document of title or chattel paper.

6
7 (i) “Electronic” means relating to technology having electrical, digital, magnetic,
8 wireless, optical, electromagnetic, or similar capabilities.

9
10 **Preliminary Comment**

11
12 The definition of “electronic”, which conforms to amended Article 2, may be moved to
13 revised Article 1.

14
15 (j) “Electronic agent” means a computer program or an electronic or other
16 automated means used independently to initiate an action or respond to electronic records
17 or performances in whole or in part, without review or action by an individual.

18 **Preliminary Comment**

19
20 The definition of “electronic agent”, which conforms to amended Article 2, may be moved
21 to revised Article 1.

22
23 (k) “Electronic record” means a record created, generated, sent, communicated,
24 received, or stored by electronic means.

25 **Preliminary Comment**

26
27 The definition of “electronic record”, which conforms to amended Article 2, may be
28 moved to revised Article 1.

29
30 (f) (l) "Fault" means wrongful act, omission, breach, or default.

31
32 **Preliminary Comment**

33
34 The definition of “fault” may be moved to revised Article 1.

35
36 ~~(g) "Finance lease" means a lease with respect to which:~~

37 ~~(i) the lessor does not select, manufacture, or supply the goods;~~

1 ~~(ii) the lessor acquires the goods or the right to possession and use of the~~
2 ~~goods in connection with the lease; and~~

3 ~~(iii) one of the following occurs:~~

4 ~~(A) the lessee receives a copy of the contract by which the lessor~~
5 ~~acquired the goods or the right to possession and use of the goods before signing~~
6 ~~the lease contract;~~

7 ~~(B) the lessee's approval of the contract by which the lessor~~
8 ~~acquired the goods or the right to possession and use of the goods is a condition to~~
9 ~~effectiveness of the lease contract;~~

10 ~~(C) the lessee, before signing the lease contract, receives an~~
11 ~~accurate and complete statement designating the promises and warranties, and any~~
12 ~~disclaimers of warranties, limitations or modifications of remedies, or liquidated~~
13 ~~damages, including those of a third party, such as the manufacturer of the goods,~~
14 ~~provided to the lessor by the person supplying the goods in connection with or as~~
15 ~~part of the contract by which the lessor acquired the goods or the right to~~
16 ~~possession and use of the goods; or~~

17 ~~(D) if the lease is not a consumer lease, the lessor, before the lessee~~
18 ~~signs the lease contract, informs the lessee in writing (a) of the identity of the~~
19 ~~person supplying the goods to the lessor, unless the lessee has selected that person~~
20 ~~and directed the lessor to acquire the goods or the right to possession and use of~~
21 ~~the goods from that person, (b) that the lessee is entitled under this Article to the~~
22 ~~promises and warranties, including those of any third party, provided to the lessor~~

1 by the person supplying the goods in connection with or as part of the contract by
2 which the lessor acquired the goods or the right to possession and use of the
3 goods, and (c) that the lessee may communicate with the person supplying the
4 goods to the lessor and receive an accurate and complete statement of those
5 promises and warranties, including any disclaimers and limitations of them or of
6 remedies.

7 (m) “Finance lease” means a lease with respect to which:

8 (i) the lessor does not select, manufacture, or supply the goods;

9 (ii) the lessor acquires the goods or the right to possession and use of the
10 goods in connection with the lease or, in the case of goods that have been leased
11 previously by the lessor and are not being leased to a consumer, in connection with
12 another lease; and

13 (iii) one of the following occurs:

14 (A) the lessee receives a copy of the agreement by which the lessor
15 acquired, or proposes to acquire, the goods or the right to possession and use of
16 the goods before authenticating the lease agreement;

17 (B) the lessee’s approval of the agreement or of the general
18 contractual terms under which the lessor acquired or proposes to acquire the
19 goods or the right to possession and use of the goods is a condition to the
20 effectiveness of the lease contract;

21 (C) the lessee, before authenticating the lease agreement, receives
22 an accurate and complete statement designating the promises and warranties, and

1 any disclaimers of warranties, limitations or modifications of remedies, or
2 liquidated damages, including those of a third party, such as the manufacturer of
3 the goods, provided to the lessor by the person supplying the goods in connection
4 with or as part of the contract by which the lessor acquired the goods or the right
5 to possession and use of the goods; or

6 (D) if the lease is not a consumer lease, before the lessee
7 authenticates the lease agreement, the lessor informs the lessee in a record:

8 (I) of the identity of the person supplying the goods to the
9 lessor, unless the lessee has selected that person and directed the lessor to acquire
10 the goods or the right to possession and use of the goods from that person;

11 (II) that the lessee is entitled under this article to the
12 promises and warranties, including those of any third party, provided to the lessor
13 by the person supplying the goods in connection with or as part of the contract by
14 which the lessor acquired the goods or the right to possession and use of the
15 goods; and

16 (III) that the lessee may communicate with the person
17 supplying the goods to the lessor and receive an accurate and complete statement
18 of those promises and warranties, including any disclaimers and limitations of
19 them, or a statement of remedies.

20 **Preliminary Comment**

21
22 The definition has been amended to permit continuation of the status of “finance lease”
23 when, except when the new lease is a consumer lease, a finance lessor re-leases goods that
24 previously were subject to a finance lease.

(n) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(h) (o) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (Section 2A–309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles investment securities (Article 8), things in action, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

Preliminary Comment

The deletion of the terms from Article 9 and the insertion of “investment securities” and “things in action” make the definition conform to Article 2. The reason for the change is to avoid using the term “general intangibles,” which in revised Article 9 includes “software.”

(p) “Information processing system” means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

Preliminary Comment

The definition of “information processing system”, which conforms to amended Article 2, may be moved to revised Article 1.

(i) (r) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) (s) "Lease" means a transfer of the right to possession and use of goods for a term period in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

1 **Preliminary Comment**

2
3 The phrase “for a period” replaces “for a term” in the first sentence. The use of “term”
4 with two different meanings in the same definition could cause confusion.
5

6 (k) (t) "Lease agreement" means the bargain, with respect to the lease, of the
7 lessor and the lessee in fact as found in their language or by implication from other
8 circumstances including course of dealing or usage of trade or course of performance as
9 provided in this Article. Unless the context clearly indicates otherwise, the term includes a
10 sublease agreement.

11 (h) (u) "Lease contract" means the total legal obligation that results from the lease
12 agreement as affected by this Article and any other applicable rules of law. Unless the
13 context clearly indicates otherwise, the term includes a sublease contract.

14 (m) (v) "Leasehold interest" means the interest of the lessor or the lessee under a
15 lease contract.

16 (n) (w) "Lessee" means a person who acquires the right to possession and use of
17 goods under a lease. Unless the context clearly indicates otherwise, the term includes a
18 sublessee.

19 (o) ~~"Lessee in ordinary course of business" means a person who in good faith and~~
20 ~~without knowledge that the lease to him [or her] is in violation of the ownership rights or~~
21 ~~security interest or leasehold interest of a third party in the goods, leases in ordinary~~
22 ~~course from a person in the business of selling or leasing goods of that kind but does not~~
23 ~~include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on~~
24 ~~secured or unsecured credit and includes receiving goods or documents of title under a~~

1 ~~pre-existing lease contract but does not include a transfer in bulk or as security for or in~~
2 ~~total or partial satisfaction of a money debt.~~

3 (x) "Lessee in ordinary course of business" means a person that leases goods in
4 good faith, without knowledge that the lease violates the rights of another person, and in
5 the ordinary course from a person, other than a pawnbroker, in the business of selling or
6 leasing goods of that kind. A person leases in ordinary course if the lease to the person
7 comports with the usual or customary practices in the kind of business in which the lessor
8 is engaged or with the lessor's own usual or customary practices. A lessee in ordinary
9 course of business may lease for cash, by exchange of other property, or on secured or
10 unsecured credit, and may acquire goods or documents of title under a preexisting lease
11 contract. Only a lessee that takes possession of the goods or has a right to recover the
12 goods from the lessor may be a lessee in ordinary course of business. A person that
13 acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a
14 money debt is not a lessee in ordinary course of business.

15 **Preliminary Comment**

16
17 This definition conforms with amendments to Section 1-201(9)(buyer in ordinary course
18 of business) that were part of the Article 9 revision process (omitting only the reference to sales
19 of minerals).

20
21 (p) (y) "Lessor" means a person who transfers the right to possession and use of
22 goods under a lease. Unless the context clearly indicates otherwise, the term includes a
23 sublessor.

24 (q) (z) "Lessor's residual interest" means the lessor's interest in the goods after
25 expiration, termination, or cancellation of the lease contract.

1 (†) (aa) "Lien" means a charge against or interest in goods to secure payment of a
2 debt or performance of an obligation, but the term does not include a security interest.

3 (§) (bb) "Lot" means a parcel or a single article that is the subject matter of a
4 separate lease or delivery, whether or not it is sufficient to perform the lease contract.

5 (†) (cc) "Merchant lessee" means a lessee that is a merchant with respect to goods
6 of the kind subject to the lease.

7 (†) (dd) "Present value" means the amount as of a date certain of one or more
8 sums payable in the future, discounted to the date certain. The discount is determined by
9 the interest rate specified by the parties if the rate was not manifestly unreasonable at the
10 time the transaction was entered into; otherwise, the discount is determined by a
11 commercially reasonable rate that takes into account the facts and circumstances of each
12 case at the time the transaction was entered into.

13 (†) (ee) "Purchase" includes taking by sale, lease, mortgage, security interest,
14 pledge, gift, or any other voluntary transaction creating an interest in goods.

15 (ff) "Receipt" means:

16 (i) with respect to goods, taking delivery; or

17 (ii) with respect to a notice:

18 (A) coming to a person's attention; or

19 (B) being delivered to and available at an agreed location, or at an
20 information processing system designated by agreement for that purpose in a form
21 capable of being processed by and, if the recipient does not utilize an electronic
22 agent, perceived from a system of that type by the recipient, but a notice that is an

1 electronic record is not received if the sender or its information processing system
2 inhibits the ability of the recipient to print or store the record; or, in the absence of
3 an agreed location or system:

4 (I) in the case of a notice that is not an electronic record,
5 being delivered at the person's residence, or the person's place of business through
6 which the contract was made, or at any other place held out by the person as a
7 place for receipt of notices of the kind; or

8 (II) in the case of a notice that is an electronic record, being
9 delivered to and available at a system or at an address in that system in a form
10 capable of being processed by and, if the recipient does not utilize an electronic
11 agent, perceived from a system of that type by a recipient, if the recipient uses, or
12 otherwise holds out, that system or address for receipt of notices of the kind and
13 the sender does not know that the notice cannot be accessed from that place, but a
14 notice that is an electronic record is not received if the sender or its information
15 processing system inhibits the ability of the recipient to print or store the record.

16 **Preliminary Comment**

17
18 The definition of "receipt" conforms to amended Article 2. It may, to the extent it deals
19 with receipt of notices, be moved to revised Article 1.

20
21 (gg) "Receive" means to take receipt.

22
23 (hh) "Record" means information that is inscribed on a tangible medium or that is
24 stored in an electronic or other medium and is retrievable in perceivable form.

25 **Preliminary Comment**

1 This definition conforms to amended Article 2 and revised Article 9. It may be moved to
2 revised Article 1.

3
4 ~~(w)~~ (ii) "Sublease" means a lease of goods the right to possession and use of which
5 was acquired by the lessor as a lessee under an existing lease.

6 ~~(x)~~ (jj) "Supplier" means a person from whom a lessor buys or leases goods to be
7 leased under a finance lease.

8 ~~(y)~~ (kk) "Supply contract" means a contract under which a lessor buys or leases
9 goods to be leased.

10 ~~(z)~~ (ll) "Termination" occurs when either party pursuant to a power created by
11 agreement or law puts an end to the lease contract otherwise than for default.

12 (2) Other definitions applying to this Article and the sections in which they appear are:

13
14 "Accessions". Section 2A–310(1).

15
16 "Construction mortgage". Section 2A–309(1)(d).

17
18 "Encumbrance". Section 2A–309(1)(e).

19
20 "Fixtures". Section 2A–309(1)(a).

21
22 "Fixture filing". Section 2A–309(1)(b).

23
24 "Purchase money lease". Section 2A–309(1)(c).

25
26 (3) The following definitions in other Articles apply to this Article:

27
28 ~~"Account". Section 9–106.~~

29
30 "Between merchants". Section 2–104(3).

31
32 "Buyer". Section 2–103(1)(a).

33
34 ~~"Chattel paper". Section 9–105(1)(b).~~

1 "Consumer goods". Section 9–109(1).

2
3 ~~"Document". Section 9–105(1)(f).~~

4
5 "Entrusting". Section 2–403(3).

6
7 ~~"General intangibles". Section 9–106.~~

8
9 "Good faith". Section 2–103(1)(b).

10
11 ~~"Instrument". Section 9–105(1)(i).~~

12
13 "Merchant". Section 2–104(1).

14
15 "Mortgage". Section 9–105(1)(j).

16
17 "Pursuant to commitment". Section 9–105(1)(k).

18
19 "Receipt". Section 2–103(1)(c).

20
21 "Sale". Section 2–106(1).

22
23 "Sale on approval". Section 2–326.

24
25 "Sale or return". Section 2–326.

26
27 "Seller". Section 2–103(1)(d).

28
29 (4) In addition Article 1 contains general definitions and principles of construction and
30 interpretation applicable throughout this Article.

31
32 **§ 2A–104. Leases Subject to Other Law.**

33
34 (1) A lease, although subject to this Article, is also subject to any applicable:

35 (a) certificate of title statute of this State: (list any certificate of title statutes
36 covering automobiles, trailers, mobile homes, boats, farm tractors, and the like);

37 (b) certificate of title statute of another jurisdiction (Section 2A–105); or

(c) consumer protection statute or rule of this State, or final consumer protection decision of a court of this State existing on the effective date of this Article.

(2) In case of conflict between this Article, other than Sections 2A–105, 2A–304(3), and 2A–305(3), and a statute or decision referred to in subsection (1), the statute or decision controls.

~~(3) Failure to comply with an applicable law has only the effect specified therein~~For purposes of this Article, failure to comply with a law referred to in subsection (1) has only the effect specified in that law.

(4) This article modifies, limits, and supersedes the application of the Electronic Signatures in Global and National Commerce Act (U.S.C.) except to the extent that act provides protection for consumers.

Preliminary Comment

Subsection (3) has been modified to conform to the style of amended Article 2.
Subsection (4) conforms to amended Article 2.

§ 2A–105. Territorial Application of Article to Goods Covered by Certificate of Title.

~~Subject to the provisions of Sections 2A–304(3) and 2A–305(3), with respect to goods covered by a certificate of title issued under a statute of this State or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate, or (b) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.~~

(1) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate-of-title law the goods are covered

1 and the goods or the lessee or lessor.

2 (2) Goods become covered by a certificate of title when a valid application for the
3 certificate of title and the application fee are delivered to the appropriate authority. Goods cease
4 to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be
5 effective under the law of the issuing jurisdiction or the time the goods become covered
6 subsequently by a certificate of title issues by another jurisdiction.

7 (3) Subject to Sections 2A-304(c) and 2A-305(c), with respect to goods covered by a
8 certificate of title under a statute of this State or of another jurisdiction, compliance and the effect
9 of compliance or noncompliance with the certificate-of-title statute are governed by the local law
10 of the jurisdiction whose certificate covers the goods from the time the goods become covered by
11 the certificate until the goods cease to be covered by the certificate.

12
13 **Preliminary Comment**
14

15
16 This section conforms with revised Article 9.
17

18
19 **~~§ 2A-107. Waiver or Renunciation of Claim or Right After Default~~ Reserved.**
20

21 ~~Any claim or right arising out of an alleged default or breach of warranty may be~~
22 ~~discharged in whole or in part without consideration by a written waiver or renunciation signed~~
23 ~~and delivered by the aggrieved party.~~

24 **Preliminary Comment**
25

26 This section has been moved to revised Article 1 (Section 1-306).
27

28
29 **§ 2A-108. Unconscionability.**

1 (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to
2 have been unconscionable at the time it was made the court may refuse to enforce the lease
3 contract, or it may enforce the remainder of the lease contract without the unconscionable clause,
4 or it may so limit the application of any unconscionable clause as to avoid any unconscionable
5 result.

6 (2) With respect to a consumer lease, if the court as a matter of law finds that a lease
7 contract or any clause of a lease contract has been induced by unconscionable conduct or that
8 unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the
9 court may grant appropriate relief.

10 (3) Before making a finding of unconscionability under subsection (1) or (2), the court, on
11 its own motion or that of a party, shall afford the parties a reasonable opportunity to present
12 evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the
13 conduct.

14 (4) In an action in which the lessee claims unconscionability with respect to a consumer
15 lease:

16 (a) If the court finds unconscionability under subsection (1) or (2), the court shall
17 award reasonable attorney's fees to the lessee.

18 (b) If the court does not find unconscionability and the lessee claiming
19 unconscionability has brought or maintained an action ~~he [or she]~~ the lessee knew to be
20 groundless, the court shall award reasonable attorney's fees to the party against whom the
21 claim is made.

22 (c) In determining attorney's fees, the amount of the recovery on behalf of the

1 claimant under subsections (1) and (2) is not controlling.

2
3 **§ 2A–109. Option to Accelerate at Will.**

4 (1) A term providing that one party or ~~his [or her]~~ the party's successor in interest may
5 accelerate payment or performance or require collateral or additional collateral "at will" or "when
6 ~~he [or she]~~ the party deems ~~himself [or herself]~~ itself insecure" or in words of similar import must
7 be construed to mean that ~~he [or she]~~ the party has power to do so only if ~~he [or she]~~ the party in
8 good faith believes that the prospect of payment or performance is impaired.

9 (2) With respect to a consumer lease, the burden of establishing good faith under
10 subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack
11 of good faith is on the party against whom the power has been exercised.

12
13 **PART 2**

14
15 **FORMATION AND CONSTRUCTION OF LEASE CONTRACT; ELECTRONIC**
16 **CONTRACTING**

17
18
19 **§ 2A–201. Statute of Frauds.**

20 (1) A lease contract is not enforceable by way of action or defense unless:

21 (a) the total payments to be made under the lease contract, excluding payments for
22 options to renew or buy, are less than \$1,000; or

23 (b) there is a ~~writing~~ record, ~~signed~~ authenticated by the party against whom
24 enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease
25 contract has been made between the parties and to describe the goods leased and the lease

1 term.

2 (2) Any description of leased goods or of the lease term is sufficient and satisfies
3 subsection (1)(b), whether or not it is specific, if it reasonably identifies what is described.

4 (3) A ~~writing~~ record is not insufficient because it omits or incorrectly states a term agreed
5 upon, but the lease contract is not enforceable under subsection (1)(b) beyond the lease term and
6 the quantity of goods shown in the ~~writing~~ record.

7 (4) A lease contract that does not satisfy the requirements of subsection (1), but which is
8 valid in other respects, is enforceable:

9 (a) if the goods are to be specially manufactured or obtained for the lessee and are
10 not suitable for lease or sale to others in the ordinary course of the lessor's business, and
11 the lessor, before notice of repudiation is received and under circumstances that
12 reasonably indicate that the goods are for the lessee, has made either a substantial
13 beginning of their manufacture or commitments for their procurement;

14 (b) if the party against whom enforcement is sought admits in that party's pleading,
15 ~~testimony or otherwise in court~~ or in the party's testimony or otherwise under oath that a
16 lease contract was made, but the lease contract is not enforceable under this provision
17 beyond the quantity of goods admitted; or

18 (c) with respect to goods that have been received and accepted by the lessee.

19 (5) The lease term under a lease contract referred to in subsection (4) is:

20 (a) if there is a ~~writing~~ record ~~signed~~ authenticated by the party against whom
21 enforcement is sought or by that party's authorized agent specifying the lease term, the
22 term so specified;

(b) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court or in the party's testimony or otherwise under oath a lease term, the term so admitted; or

(c) a reasonable lease term.

(6) A lease contract that is enforceable under this section is not rendered unenforceable merely because it is not capable of being performed within one year or any other applicable period after its making.

Preliminary Comment

The changes to this section conform to amended Article 2.

§ 2A-202. Final ~~Written~~ Expression in a Record: Parol or Extrinsic Evidence.

(1) Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a ~~writing~~ record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be ~~explained or~~ supplemented by evidence of:

(a) ~~by course of dealing or usage of trade or by course of performance~~ course of performance, course of dealing or usage of trade (Section 1-303); and

(b) ~~by evidence of~~ consistent additional terms unless the court finds the ~~writing~~ record to have been intended also as a complete and exclusive statement of the terms of the agreement.

(2) Terms in a record may be explained by evidence of course of performance, course of

1 dealing, or usage of trade without a preliminary determination by the court that the language used
2 is ambiguous.

3 **Preliminary Comment**

4
5 The changes to this section conform to amended Article 2.
6

7
8 **§ 2A–203. Seals Inoperative.**

9 The affixing of a seal to a ~~writing~~ record evidencing a lease contract or an offer to enter
10 into a lease contract does not render the ~~writing~~ record a sealed instrument and the law with
11 respect to sealed instruments does not apply to the lease contract or offer.
12

13 **§ 2A–204. Formation in General.**

14 (1) A lease contract may be made in any manner sufficient to show agreement, including
15 conduct by both parties which recognizes the existence of a lease contract.

16 (2) An agreement sufficient to constitute a lease contract may be found although the
17 moment of its making is undetermined.

18 (3) Although one or more terms are left open, a lease contract does not fail for
19 indefiniteness if the parties have intended to make a lease contract and there is a reasonably
20 certain basis for giving an appropriate remedy.

21 (4) Except as otherwise provided in Sections 2A-222 through 2A-224, the following rules
22 apply:

23 (a) A lease contract may be formed by the interaction of electronic agents. If the
24 interaction resulting from the electronic agents' engaging in operations shows an

1 agreement sufficient to constitute a lease contract under this section, a lease contract is
2 formed.

3 (b) A lease contract may be formed by the interaction of an electronic agent and
4 an individual acting on the individual's own behalf or for another individual. A lease
5 contract is formed if the individual takes actions that the individual is free to refuse to take
6 or makes a statement that the individual has reason to know will:

7 (i) cause the electronic agent to complete the transaction or performance;

8 or

9 (ii) indicate acceptance of an offer, regardless of other expressions or
10 actions by the individual to which the electronic agent cannot react.

11 **Preliminary Comment**

12
13 The changes to this section conform to amended Article 2.
14

15 16 **§ 2A–205. Firm Offers.**

17 An offer by a merchant to lease goods to or from another person in ~~a signed writing~~ an
18 authenticated record that by its terms gives assurance it will be held open is not revocable, for
19 lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in
20 no event may the period of irrevocability exceed 3 months. Any such term of assurance ~~on a form~~
21 in a form record supplied by the offeree must be separately ~~signed~~ authenticated by the offeror.
22

23 **~~§ 2A–207. Course of Performance or Practical Construction~~ Reserved.**

24 ~~(1) If a lease contract involves repeated occasions for performance by either party with~~

1 ~~knowledge of the nature of the performance and opportunity for objection to it by the other, any~~
2 ~~course of performance accepted or acquiesced in without objection is relevant to determine the~~
3 ~~meaning of the lease agreement.~~

4 ~~(2) The express terms of a lease agreement and any course of performance, as well as any~~
5 ~~course of dealing and usage of trade, must be construed whenever reasonable as consistent with~~
6 ~~each other; but if that construction is unreasonable, express terms control course of performance,~~
7 ~~course of performance controls both course of dealing and usage of trade, and course of dealing~~
8 ~~controls usage of trade.~~

9 ~~(3) Subject to the provisions of Section 2A-208 on modification and waiver, course of~~
10 ~~performance is relevant to show a waiver or modification of any term inconsistent with the course~~
11 ~~of performance.~~

12 Preliminary Comment

13 This section has been moved to revised Article 1 (Section 1-303).
14

15 **§ 2A-208. Modification, Rescission and Waiver.**

16 (1) An agreement modifying a lease contract needs no consideration to be binding.
17

18 (2) ~~A signed~~ An authenticated lease agreement that excludes modification or rescission
19 except by ~~a signed writing~~ an authenticated record may not be otherwise modified or rescinded,
20 but, except as between merchants, such a requirement ~~on a form~~ in a form record supplied by a
21 merchant must be separately ~~signed~~ authenticated by the other party.
22

23 (3) Although an attempt at modification or rescission does not satisfy the requirements of
24 subsection (2), it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

§ 2A-211. Warranties Against Interference and Against Infringement; Lessee's Obligation Against Infringement.

~~(1) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.~~

~~(2) Except in a finance lease there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.~~

~~(3) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.~~

(1) Except in a finance lease, a lessor in a lease contract warrants that, except for claims by any person by way of infringement or the like, for the duration of the lease no person holds:

(a) a claim to or interest in the goods not attributable to the lessee's own act or omission which will interfere with the lessee's enjoyment of its leasehold interest; or

(b) a colorable claim to or interest in the goods which will unreasonably expose the

1 lessee to litigation.

2 (2) A finance lessor warrants that, except for claims by way of infringement or the like,
3 for the duration of the lease no person holds:

4 (a) a claim or interest in the goods that arose from an act or omission of the lessor
5 which will interfere with the lessee's enjoyment of its leasehold interest; or

6 (b) a colorable claim to or interest in the goods that arose from an act or omission
7 of the lessor which will unreasonably expose the lessee to litigation.

8 (3) Except in a finance lease, a lessor that is a merchant regularly dealing in goods of the
9 kind warrants that the goods will be delivered free of the rightful claim of a third party by way of
10 infringement or the like. However, a lessee that furnishes specifications to the lessor holds the
11 lessor harmless against any claim of infringement or the like that arises out of compliance with the
12 specifications.

13 (4) A warranty under this section may be excluded or modified only by specific language
14 or by circumstances that give the lessee reason to know that the lessor purports to transfer only
15 such right as the lessor or a third party may have, or that it is leasing subject to any claims of
16 infringement or the like.

17 **Preliminary Comment**

18
19 Subsections (1) and (2) are new. They parallel amended Article 2 in that they specifically
20 provide for the doctrine of marketable title, but they differ from current law and amended Article
21 2 in that they are drafted to reflect the differences between a finance lease and other leases.

22
23 Subsection (3) is an amalgamation of two subsections in existing Article 2A. The changes
24 conform to amended Article 2.

25
26 Subsection (4) has been moved from existing Section 2A-214(4). The change is
27 consistent with amended Article 2.

1
2 **§ 2A–212. Implied Warranty of Merchantability.**

3 (1) Except in a finance lease, a warranty that the goods will be merchantable is implied in a
4 lease contract if the lessor is a merchant with respect to goods of that kind.

5 (2) Goods to be merchantable must be at least such as

6 (a) pass without objection in the trade under the description in the lease agreement;

7 (b) in the case of fungible goods, are of fair average quality within the description;

8 (c) are fit for the ordinary purposes for which goods of that ~~type~~ description are
9 used;

10 (d) run, within the variation permitted by the lease agreement, of even kind,
11 quality, and quantity within each unit and among all units involved;

12 (e) are adequately contained, packaged, and labeled as the lease agreement may
13 require; and

14 (f) conform to any promises or affirmations of fact made on the container or label.

15 (3) Other implied warranties may arise from course of dealing or usage of trade.

16 **Preliminary Comment**

17 The change to subsection (2)(c) conforms to amended Article 2.
18
19
20
21
22

23 **§ 2A–214. Exclusion or Modification of Warranties.**

24 (1) Words or conduct relevant to the creation of an express warranty and words or
25 conduct tending to negate or limit a warranty must be construed wherever reasonable as
26 consistent with each other; but, subject to the provisions of Section 2A–202 on parol or extrinsic

evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

~~(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (3), to exclude or modify any implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose".~~

~~(3) Notwithstanding subsection (2), but subject to subsection (4),~~

~~(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;~~

~~(b) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and~~

~~(c) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.~~

~~(4) To exclude or modify a warranty against interference or against infringement (Section 2A-211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any~~

1 person.

2 (2) Notwithstanding subsection (3), unless the circumstances indicate otherwise all implied
3 warranties are excluded by expressions such as “as is” or “with all faults” or similar language or
4 conduct that in common understanding make it clear to the lessee that the lessor assumes no
5 responsibility for the quality or fitness of the goods. In a consumer lease, the requirements of this
6 subsection must be satisfied by conspicuous language in a record.

7 (3) Subject to subsection (2), to exclude or modify an implied warranty of merchantability
8 or fitness, or any part of either implied warranty, the following rules apply:

9 (a) The language must be in a record and be conspicuous;

10 (b) In a consumer lease, the language must:

11 (i) in the case of an implied warranty of merchantability, state “The lessor
12 undertakes no responsibility for the quality of the goods except as otherwise provided in
13 this contract”; and

14 (ii) in the case of an implied warranty of fitness, state “The lessor makes no
15 representations that the goods will be fit for any particular purpose for which you may be
16 leasing these goods, except as otherwise provided in the contract.”

17 (c) In a lease contract other than a consumer lease, the language must:

18 (i) in the case of an implied warranty of merchantability, mention
19 merchantability; and

20 (ii) in the case of an implied warranty of fitness, state, for example, that
21 “There are no warranties which extend beyond the description on the face hereof.”

22 (d) Language that satisfies paragraph (b) also satisfies paragraph (c).

(4) An implied warranty may also be excluded or modified by course of performance, course of dealing, or usage of trade.

(5) If a lessee before entering into the contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that a reasonable examination ought in the circumstances to have revealed to the lessee.

(6) Remedies for breach of warranty may be limited in accordance with this article with respect to liquidation or limitation of damages and contractual modification of remedy.

Preliminary Comment

The changes conform to amended Article 2. Former subsection (4) has been moved to Section 2-211.

§ 2A-219. Risk of Loss.

(1) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(2) Subject to the provisions of this Article on the effect of default on risk of loss (Section 2A-220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(a) If the lease contract requires or authorizes the goods to be shipped by carrier

(i) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are ~~only~~ delivered to the carrier; but

(ii) if it does require delivery at a particular destination and the goods are there ~~duly~~ tendered while in the possession of the carrier, the risk of loss passes to the

1 lessee when the goods are there ~~and~~ so tendered as to enable the lessee to take delivery.

2 (b) If the goods are held by a bailee to be delivered without being moved, the risk
3 of loss passes to the lessee on acknowledgment by the bailee to the lessee of the lessee's
4 right to possession of the goods.

5 (c) In any case not within subsection (a) or (b), the risk of loss passes to the lessee
6 on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the
7 supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

8 **Preliminary Comment**

9
10 The changes conform to amended Article 2.

11
12
13 **§ 2A-220. Effect of Default on Risk of Loss.**

14 (1) Where risk of loss is to pass to the lessee and the time of passage is not stated:

15 (a) If a tender or delivery of goods so fails to conform to the lease contract as to
16 give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a
17 finance lease, the supplier, until cure or acceptance.

18 (b) If the lessee rightfully revokes acceptance, ~~he [or she]~~ the lessee, to the extent
19 of any deficiency in ~~his [or her]~~ its effective insurance coverage, may treat the risk of loss
20 as having remained with the lessor from the beginning.

21 (2) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods
22 already identified to a lease contract repudiates or is otherwise in default under the lease contract,
23 the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in ~~his [or~~
24 ~~her]~~ its effective insurance coverage may treat the risk of loss as resting on the lessee for a

1 commercially reasonable time.

2
3 **§ 2A-221. Casualty to Identified Goods.**

4 If a lease contract requires goods identified when the lease contract is made, and the
5 goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the
6 goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or
7 Section 2A-219, then:

8 (a) if the loss is total, the lease contract is ~~avoided~~ terminated; and

9 (b) if the loss is partial or the goods have so deteriorated as to no longer conform
10 to the lease contract, the lessee may nevertheless demand inspection and at his [or her]
11 option either treat the lease contract as avoided or, except in a finance lease that is not a
12 consumer lease, accept the goods with due allowance from the rent payable for the
13 balance of the lease term for the deterioration or the deficiency in quantity but without
14 further right against the lessor.

15 **Preliminary Comment**

16 The change in paragraph (b) conforms to amended Article 2.
17
18
19
20

21 **§ 2A-222. Legal Recognition of Electronic Contracts, Records and Authentications.**

22 (1) A record or authentication may not be denied legal effect or enforceability solely
23 because it is in electronic form.

24 (2) A contract may not be denied legal effect or enforceability solely because an

1 electronic record was used in its formation.

2 (3) This article does not require a record or authentication to be created, generated, sent,
3 communicated, received, stored, or otherwise processed by electronic means or in electronic
4 form.

5 (4) A contract formed by the interaction of an individual and an electronic agent under
6 Section 2A-204(4)(b) does not include terms provided by the individual if the individual had
7 reason to know that the agent could not react to the terms as provided.

8 **Preliminary Comment**

9
10 This section conforms to amended Article 2.

11
12
13 **§ 2A-223. Attribution.**

14 An electronic record or electronic authentication is attributed to a person if the record was
15 created by or the authentication was the act of the person or the person's electronic agent or the
16 person is otherwise bound by the act under the law.

17 **Preliminary Comment**

18
19 This section conforms to amended Article 2.

20
21
22
23
24
25 **§ 2A-224 . Electronic Communication.**

26 (1) If the receipt of an electronic communication has a legal effect, it has that effect even
27 though no individual is aware of its receipt.

28 (2) Receipt of an electronic acknowledgment of an electronic communication establishes

1 that the communication was received but, in itself, does not establish that the content sent
2 corresponds to the content received.

3 Preliminary Comment

4
5 This section conforms to amended Article 2.
6

7 8 **PART 3**

9 10 **EFFECT OF LEASE CONTRACT**

11 **§ 2A–303. Alienability of Party's Interest Under Lease Contract or of Lessor's Residual** 12 **Interest in Goods; Delegation of Performance; Transfer of Rights.** 13 14

15 (1) As used in this section, "creation of a security interest" includes the sale of a lease
16 contract that is subject to Article 9, Secured Transactions, by reason of Section ~~9–102(1)(b).~~ 9–
17 109(a)(3).

18 ~~(2) Except as provided in subsections (3) and (4), a provision in a lease agreement which~~
19 ~~(i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation~~
20 ~~or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest~~
21 ~~of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes~~
22 ~~such a transfer an event of default, gives rise to the rights and remedies provided in subsection~~
23 ~~(5), but a transfer that is prohibited or is an event of default under the lease agreement is~~
24 ~~otherwise effective.~~

25 ~~(3) A provision in a lease agreement which (i) prohibits the creation or enforcement of a~~
26 ~~security interest in an interest of a party under the lease contract or in the lessor's residual interest~~
27 ~~in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then~~
28 ~~only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or~~

1 use of the goods in violation of the provision or an actual delegation of a material performance of
2 either party to the lease contract in violation of the provision. Neither the granting nor the
3 enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the
4 lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining
5 return performance by, materially changes the duty of, or materially increases the burden or risk
6 imposed on, the lessee within the purview of subsection (5) unless, and then only to the extent
7 that, there is an actual delegation of a material performance of the lessor.

8 (4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for
9 default with respect to the whole lease contract or of a right to payment arising out of the
10 transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an
11 event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the
12 prospect of obtaining return performance by, materially changes the duty of, or materially
13 increases the burden or risk imposed on, the other party to the lease contract within the purview
14 of subsection (5).

15 (5) Subject to subsections (3) and (4):

16 (a) if a transfer is made which is made an event of default under a lease agreement,
17 the party to the lease contract not making the transfer, unless that party waives the default
18 or otherwise agrees, has the rights and remedies described in Section 2A-501(2);

19 (b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited
20 under a lease agreement or (ii) materially impairs the prospect of obtaining return
21 performance by, materially changes the duty of, or materially increases the burden or risk
22 imposed on, the other party to the lease contract, unless the party not making the transfer

1 ~~agrees at any time to the transfer in the lease contract or otherwise, then, except as limited~~
2 ~~by contract, (i) the transferor is liable to the party not making the transfer for damages~~
3 ~~caused by the transfer to the extent that the damages could not reasonably be prevented by~~
4 ~~the party not making the transfer and (ii) a court having jurisdiction may grant other~~
5 ~~appropriate relief, including cancellation of the lease contract or an injunction against the~~
6 ~~transfer.~~

7 (2) Except as otherwise provided in subsection (c) and Section 9-407 or otherwise
8 agreed, a term in a lease agreement which (i) prohibits the voluntary or involuntary transfer,
9 including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment,
10 levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's
11 residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the
12 rights and remedies provided in subsection (d). However, a transfer that is prohibited or is an
13 event of default under the lease agreement is otherwise effective.

14 (3) A term in a lease agreement which (i) prohibits a transfer of a right to damages for
15 default with respect to the whole lease contract or of a right to payment arising out of the
16 transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an
17 event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the
18 prospect of obtaining return performance by, materially changes the duty of, or materially
19 increases the burden or risk imposed on, the other party to the lease contract within subsection
20 (d).

21 (4) Subject to subsection (c) and Section 9-407:

22 (a) if a transfer is made that is an event of default under a lease agreement, the

1 party to the lease contract not making the transfer, unless that party waives the default or
2 otherwise agrees, has the rights and remedies described in Section 2A-501(b);

3 (b) if paragraph (1) is not applicable and if a transfer is made that (i) is prohibited
4 under a lease agreement or (ii) materially impairs the prospect of obtaining return
5 performance by, materially changes the duty of, or materially increases the burden or risk
6 imposed on, the other party to the lease contract, unless the party not making the transfer
7 agrees at any time to the transfer in the lease contract or otherwise, then, except as limited
8 by contract, (i) the transferor is liable to the party not making the transfer for damages
9 caused by the transfer to the extent that the damages could not reasonably be prevented by
10 the party not making the transfer and (ii) a court having jurisdiction may grant other
11 appropriate relief, including cancellation of the lease contract or an injunction against the
12 transfer.

13 ~~(6)~~ (5) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar
14 general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer
15 for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the
16 transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those
17 duties. The promise is enforceable by either the transferor or the other party to the lease contract.

18 ~~(7)~~ (6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance
19 does not relieve the transferor as against the other party of any duty to perform or of any liability
20 for default.

21 ~~(8)~~ (7) In a consumer lease, to prohibit the transfer of an interest of a party under the
22 lease contract or to make a transfer an event of default, the language must be specific, by a

1 ~~writing~~ record, and conspicuous.

2 **Preliminary Comment**

3
4 This changes to this section conform to revised Article 9.

5
6 Legislative Note: Former subsection (3) was stricken to be replaced by the rules of
7 revised Section 9-407. If a jurisdiction adopting this Act has not adopted revised Article
8 9, the following additional subsection should be incorporated into this section:
9

10 A term of a lease agreement which prohibits the creation or enforcement
11 of a security interest in an interest of a party under the lease contract or in the
12 lessor's residual interest in the goods, or which makes such a transfer an event of
13 default, is enforceable only to the extent that there is a transfer by the lessee of
14 the lessee's right of possession or use of the goods in violation of the provision or
15 a delegation of a material performance of either party to the lease contract in
16 violation of the provision. Neither the granting nor the enforcement of a security
17 interest in the lessor's interest under the lease contract, or the lessor's residual
18 interest in the goods, is a transfer that materially impairs the prospect of
19 obtaining return performance by, materially changes the duty of, or materially
20 increases the burden or risk imposed on, the lessee within the meaning of
21 subsection (e) unless, and only to the extent that, there is a delegation of a
22 material performance of the lessor.
23
24

25 **§ 2A–304. Subsequent Lease of Goods by Lessor.**

26 (1) Subject to Section 2A–303, a subsequent lessee from a lessor of goods under an
27 existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold
28 interest in the goods that the lessor had or had power to transfer, and except as provided in
29 subsection (2) and Section 2A–527(4), takes subject to the existing lease contract. A lessor with
30 voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for
31 value, but only to the extent set forth in the preceding sentence. If goods have been delivered
32 under a transaction of purchase, the lessor has that power even though:

33 (a) the lessor's transferor was deceived as to the identity of the lessor;

1 (b) the delivery was in exchange for a check which is later dishonored;

2 (c) it was agreed that the transaction was to be a "cash sale"; or

3 (d) the delivery was procured through ~~fraud punishable as larcenous under the~~
4 ~~criminal law~~ criminal fraud.

5 (2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant
6 dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that
7 lessor before the interest of the subsequent lessee became enforceable against that lessor obtains,
8 to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights
9 to the goods, and takes free of the existing lease contract.

10 (3) A subsequent lessee from the lessor of goods that are subject to an existing lease
11 contract and are covered by a certificate of title issued under a statute of this State or of another
12 jurisdiction takes no greater rights than those provided both by this section and by the certificate
13 of title statute.

14 **Preliminary Comment**

15 The change in subsection (1)(d) conforms to amended Article 2.
16
17
18

19 **§ 2A–305. Sale or Sublease of Goods by Lessee.**

20 (1) Subject to the provisions of Section 2A–303, a buyer or sublessee from the lessee of
21 goods under an existing lease contract obtains, to the extent of the interest transferred, the
22 leasehold interest in the goods that the lessee had or had power to transfer, and except as
23 provided in subsection (2) and Section 2A–511(4), takes subject to the existing lease contract. A
24 lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good

1 faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the
2 preceding sentence. When goods have been delivered under a transaction of lease the lessee has
3 that power even though:

4 (a) the lessor was deceived as to the identity of the lessee;

5 (b) the delivery was in exchange for a check which is later dishonored; or

6 (c) the delivery was procured through ~~fraud punishable as larcenous under the~~
7 ~~criminal law~~ criminal fraud.

8 (2) A buyer in the ordinary course of business or a sublessee in the ordinary course of
9 business from a lessee who is a merchant dealing in goods of that kind to whom the goods were
10 entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and
11 lessee's rights to the goods, and takes free of the existing lease contract.

12 (3) A buyer or sublessee from the lessee of goods that are subject to an existing lease
13 contract and are covered by a certificate of title issued under a statute of this State or of another
14 jurisdiction takes no greater rights than those provided both by this section and by the certificate
15 of title statute.

17 **Preliminary Comment**

18
19 The change in subsection (1)(c) conforms to amended Article 2.

20 21 22 **§ 2A-306. Priority of Certain Liens Arising by Operation of Law.**

23 If a person in the ordinary course of ~~his or her~~ its business furnishes services or materials
24 with respect to goods subject to a lease contract, a lien upon those goods in the possession of that

1 person given by statute or rule of law for those materials or services takes priority over any
2 interest of the lessor or lessee under the lease contract or this Article unless the lien is created by
3 statute and the statute provides otherwise or unless the lien is created by rule of law and the rule
4 of law provides otherwise.

5
6 **§ 2A-307. Priority of Liens Arising by Attachment or Levy on, Security Interests in, and**
7 **Other Claims to Goods.**
8

9 ~~(1) Except as otherwise provided in Section 2A-306, a creditor of a lessee takes subject~~
10 ~~to the lease contract.~~

11 ~~(2) Except as otherwise provided in subsections (3) and (4) and in Sections 2A-306 and~~
12 ~~2A-308, a creditor of a lessor takes subject to the lease contract unless:~~

13 ~~(a) the creditor holds a lien that attached to the goods before the lease contract became~~
14 ~~enforceable;~~

15 ~~(b) the creditor holds a security interest in the goods and the lessee did not give value and receive~~
16 ~~delivery of the goods without knowledge of the security interest; or~~

17 ~~(c) the creditor holds a security interest in the goods which was perfected (Section 9-303) before~~
18 ~~the lease contract became enforceable.~~

19 ~~(3) A lessee in the ordinary course of business takes the leasehold interest free of a~~
20 ~~security interest in the goods created by the lessor even though the security interest is perfected~~
21 ~~(Section 9-303) and the lessee knows of its existence.~~

22 ~~(4) A lessee other than a lessee in the ordinary course of business takes the leasehold~~
23 ~~interest free of a security interest to the extent that it secures future advances made after the~~

1 secured party acquires knowledge of the lease or more than 45 days after the lease contract
2 becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a
3 commitment entered into without knowledge of the lease and before the expiration of the 45-day
4 period.

5 (1) Except as otherwise provided in Section 2A-306, a creditor of a lessee takes subject
6 to the lease contract.

7 (2) Except as otherwise provided in subsection (3) and Sections 2A-306 and 2A-308, a
8 creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached
9 to the goods before the lease contract became enforceable.

10 (3) Except as otherwise provided in Sections 9-317, 9-321, and 9-323, a lessee takes a
11 leasehold interest subject to a security interest held by a creditor of the lessor.

12 Preliminary Comment

13 This section conforms with revised Article 9.

14
15
16 Legislative Note: Subsections (2)(b), (2)(c), (3), and (4) of former Section 2A-307 were
17 placed in revised Article 9. Section 9-317 covers rights of third parties against
18 unperfected security interests. Section 9-321 covers lessees in ordinary course of
19 business. Section 9-323 covers rights of third parties as against future advances made
20 under perfected security interests. If a jurisdiction adopting this Act has not adopted
21 revised Article 9, the deleted subsections of former Section 2A-307 set out below should
22 be inserted as follows:

23
24 (2) Except as otherwise provided in subsections (3) and (4) and Sections
25 2A-306 and 2A-308, a creditor of a lessor takes subject to the lease contract
26 unless:

27 (a) the creditor holds a lien that attached to the goods before the
28 lease contract became enforceable;

29 (b) the creditor holds a security interest in the goods and the lessee
30 did not give value and receive delivery of the goods without knowledge of
31 the security interest; or

32 (c) the creditor holds a security interest in the goods which was

1 perfected under Article 9 before the lease contract became enforceable.

2 (3) A lessee in the ordinary course of business takes the leasehold interest
3 free of a security interest in the goods created by the lessor even if the security
4 interest is perfected under Article 9 and the lessee knows of its existence.

5 (4) A lessee other than a lessee in the ordinary course of business takes a
6 leasehold interest free of a security interest to the extent that it secures future
7 advances made after the secured party acquires knowledge of the lease or more
8 than 45 days after the lease contract becomes enforceable, whichever first occurs,
9 unless the future advances are made pursuant to a commitment entered into
10 without knowledge of the lease and before the expiration of the 45-day period.

11
12
13 **§ 2A-309. Lessor's and Lessee's Rights When Goods Become Fixtures.**

14 (1) In this section:

15 (a) goods are "fixtures" when they become so related to particular real estate that
16 an interest in them arises under real ~~estate~~ property law;

17 (b) a "fixture filing" is the filing, in the office where a mortgage on the real estate
18 would be filed or recorded, of a financing statement covering goods that are or are to
19 become fixtures and conforming to the requirements of Section ~~9-402(5)~~ 9-502(a);

20 (c) a lease is a "purchase money lease" unless the lessee has possession or use of
21 the goods or the right to possession or use of the goods before the lease agreement is
22 enforceable;

23 (d) a mortgage is a "construction mortgage" to the extent it secures an obligation
24 incurred for the construction of an improvement on land including the acquisition cost of
25 the land, if ~~the recorded writing~~ a recorded record of the mortgage so indicates; and

26 (e) "encumbrance" includes real estate mortgages and other liens on real estate and
27 all other rights in real estate that are not ownership interests.

28 (2) Under this Article a lease may be of goods that are fixtures or may continue in goods

1 that become fixtures, but no lease exists under this Article of ordinary building materials
2 incorporated into an improvement on land.

3 (3) This Article does not prevent creation of a lease of fixtures pursuant to real ~~estate~~
4 property law.

5 (4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of
6 an encumbrancer or owner of the real estate if:

7 (a) the lease is a purchase money lease, the conflicting interest of the encumbrancer
8 or owner arises before the goods become fixtures, the interest of the lessor is perfected by
9 a fixture filing before the goods become fixtures or within ten days thereafter, and the
10 lessee has an interest of record in the real estate or is in possession of the real estate; or

11 (b) the interest of the lessor is perfected by a fixture filing before the interest of the
12 encumbrancer or owner is of record, the lessor's interest has priority over any conflicting
13 interest of a predecessor in title of the encumbrancer or owner, and the lessee has an
14 interest of record in the real estate or is in possession of the real estate.

15 (5) The interest of a lessor of fixtures, whether or not perfected, has priority over the
16 conflicting interest of an encumbrancer or owner of the real estate if:

17 (a) the fixtures are readily removable factory or office machines, readily removable
18 equipment that is not primarily used or leased for use in the operation of the real estate, or
19 readily removable replacements of domestic appliances that are goods subject to a
20 consumer lease, and before the goods become fixtures the lease contract is enforceable;
21 or

22 (b) the conflicting interest is a lien on the real estate obtained by legal or equitable

1 proceedings after the lease contract is enforceable; or

2 (c) the encumbrancer or owner has consented in ~~writing~~ a record to the lease or

3 has disclaimed an interest in the goods as fixtures; or

4 ~~(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the~~

5 ~~lessee's right to remove terminates, the priority of the interest of the lessor continues for a~~

6 ~~reasonable time~~ the lessee has a right to remove the goods as against the encumbrancer or owner.

7 but if the lessee's right to remove terminates, the priority of the interest of the lessor continues for

8 a reasonable time.

9 (6) Notwithstanding subsection (4)(a) but otherwise subject to subsections (4) and (5), the
10 interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the
11 conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded
12 before the goods become fixtures if the goods become fixtures before the completion of the
13 construction. To the extent given to refinance a construction mortgage, the conflicting interest of
14 an encumbrancer of the real estate under a mortgage has this priority to the same extent as the
15 encumbrancer of the real estate under the construction mortgage.

16 (7) ~~In cases not within the preceding subsections~~ In cases not covered by subsections (3)
17 through (6), priority between the interest of a lessor of fixtures, including the lessor's residual
18 interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the
19 lessee is determined by the priority rules governing conflicting interests in real estate.

20 (8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority
21 over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the
22 lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but

1 subject to the agreement and this Article, or (ii) if necessary to enforce other rights and remedies
2 of the lessor or lessee under this Article, remove the goods from the real estate, free and clear of
3 all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee
4 must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has
5 not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in
6 value of the real estate caused by the absence of the goods removed or by any necessity of
7 replacing them. A person entitled to reimbursement may refuse permission to remove until the
8 party seeking removal gives adequate security for the performance of this obligation.

9 (9) Even though the lease agreement does not create a security interest, the interest of a
10 lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing
11 statement as a fixture filing for leased goods that are or are to become fixtures in accordance with
12 the relevant provisions of the Article on Secured Transactions (Article 9).

13 **Preliminary Comment**

14
15 The change from “real estate” to “real property” conforms to revised Article 9, as does the
16 changed cross-reference in subsection (1)(b). The changes in subsections (5) and (7) are for
17 clarification.

18
19
20 *Legislative Note: The reference in subsection (1)(b) should be to 9-402(5) in a*
21 *jurisdiction that has not adopted revised Article 9.*
22

23 **PART 4**

24 **PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED AND** 25 **EXCUSED**

26
27
28
29
30 **§ 2A–401. Insecurity: Adequate Assurance of Performance.**

1 (1) A lease contract imposes an obligation on each party that the other's expectation of
2 receiving due performance will not be impaired.

3 (2) If reasonable grounds for insecurity arise with respect to the performance of either
4 party, the insecure party may demand in ~~writing~~ a record adequate assurance of due performance.
5 Until the insecure party receives that assurance, if commercially reasonable the insecure party may
6 suspend any performance for which ~~he or she~~ the insecure party has not already received the
7 agreed return.

8 (3) A repudiation of the lease contract occurs if assurance of due performance adequate
9 under the circumstances of the particular case is not provided to the insecure party within a
10 reasonable time, not to exceed 30 days after receipt of a demand by the other party.

11 (4) Between merchants, the reasonableness of grounds for insecurity and the adequacy of
12 any assurance offered must be determined according to commercial standards.

13 (5) Acceptance of any nonconforming delivery or payment does not prejudice the
14 aggrieved party's right to demand adequate assurance of future performance.

15
16 **§ 2A-402. Anticipatory Repudiation.**

17 (1) If either party repudiates a lease contract with respect to a performance not yet due
18 under the lease contract, the loss of which performance will substantially impair the value of the
19 lease contract to the other, the aggrieved party may:

20 (a) for a commercially reasonable time, await retraction of repudiation and
21 performance by the repudiating party;

22 (b) make demand pursuant to Section 2A-401 and await assurance of future

1 performance adequate under the circumstances of the particular case; or

2 (c) resort to any right or remedy upon default under the lease contract or this
3 Article, even though the aggrieved party has notified the repudiating party that the
4 aggrieved party would await the repudiating party's performance and assurance and has
5 urged retraction. In addition, whether or not the aggrieved party is pursuing one of the
6 foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved
7 party is the lessor, proceed in accordance with the provisions of this Article on the lessor's
8 right to identify goods to the lease contract notwithstanding default or to salvage
9 unfinished goods (Section 2A–524).

10 (2) Repudiation includes language that a reasonable party would interpret to mean that
11 the other party will not or cannot make a performance still due under the contract or voluntary,
12 affirmative conduct that would appear to a reasonable party to make a future performance by the
13 other party impossible.

14 **Preliminary Comment**

15
16 The addition of subsection (2) conforms to amended Article 2.

17 **§ 2A–405. Excused Performance.**

18
19 Subject to Section 2A–404 on substituted performance, the following rules apply:

20 (a) Delay in ~~delivery or nondelivery~~ performance or nonperformance in whole or in
21 part by a lessor or a supplier who complies with paragraphs (b) and (c) is not a default
22 under the lease contract if performance as agreed has been made impracticable by the
23 occurrence of a contingency the nonoccurrence of which was a basic assumption on which
24 the lease contract was made or by compliance in good faith with any applicable foreign or

1 domestic governmental regulation or order, whether or not the regulation or order later
2 proves to be invalid.

3 (b) If the causes mentioned in paragraph (a) affect only part of the lessor's or the
4 supplier's capacity to perform, ~~he [or she]~~ the lessor or supplier shall allocate production
5 and deliveries among ~~his [or her]~~ customers but at ~~his [or her]~~ the lessor's or supplier's
6 option may include regular customers not then under contract for sale or lease as well as
7 ~~his [or her]~~ the lessor's or supplier's own requirements for further manufacture. ~~he [or~~
8 ~~she]~~ The lessor or supplier may so allocate in any manner that is fair and reasonable.

9 (c) The lessor seasonably shall notify the lessee and in the case of a finance lease the
10 supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or
11 nondelivery and, if allocation is required under paragraph (b), of the estimated quota thus made
12 available for the lessee.

13 **Preliminary Comment**

14
15 The change in paragraph (a) conforms to amended Article 2.
16

17 18 **§ 2A–406. Procedure on Excused Performance.**

19 (1) If the lessee receives notification of a material or indefinite delay or an allocation
20 justified under Section 2A–405, the lessee may by ~~written~~ notification in a record to the lessor as
21 to any goods involved, and with respect to all of the goods if under an installment lease contract
22 the value of the whole lease contract is substantially impaired (Section 2A–510):

23 (a) terminate the lease contract (Section 2A–505(2)); or

24 (b) except in a finance lease that is not a consumer lease, modify the lease contract

1 by accepting the available quota in substitution, with due allowance from the rent payable
2 for the balance of the lease term for the deficiency but without further right against the
3 lessor.

4 (2) If, after receipt of a notification from the lessor under Section 2A–405, the lessee fails
5 so to modify the lease agreement within a reasonable time not exceeding 30 days, the lease
6 contract lapses with respect to any deliveries affected.

7
8 **PART 5**

9
10 **DEFAULT**

11
12 **A. IN GENERAL**

13
14
15 **§ 2A–504. Liquidation of Damages.**

16 (1) Damages payable by either party for default, or any other act or omission, including
17 indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual
18 interest, may be liquidated in the lease agreement but only at an amount or by a formula that is
19 reasonable in light of the then anticipated harm caused by the default or other act or omission.
20 Section 2A-503 determines the enforceability of a term that limits but does not liquidate damages.

21 (2) If the lease agreement provides for liquidation of damages, and such provision does
22 not comply with subsection (1), or such provision is an exclusive or limited remedy that
23 circumstances cause to fail of its essential purpose, remedy may be had as provided in this Article.

24 ~~(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's~~
25 ~~default or insolvency (Section 2A–525 or 2A–526), the lessee is entitled to restitution of any~~

1 amount by which the sum of his [or her] payments exceeds:

2 (a) the amount to which the lessor is entitled by virtue of terms liquidating the
3 lessor's damages in accordance with subsection (1); or

4 (b) in the absence of those terms, 20 percent of the then present value of the total
5 rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a
6 consumer lease, the lesser of such amount or \$500.

7 (3) If the lessor justifiably withholds or stops performance because of the lessee's default
8 or insolvency, the lessee is entitled to restitution of any amount by which the sum of the lessee's
9 payments exceeds the amount to which the lessor is entitled by virtue of terms liquidating the
10 lessor's damages in accordance with subsection (1).

11 (4) A lessee's right to restitution under subsection (3) is subject to offset to the extent the
12 lessor establishes:

13 (a) a right to recover damages under the provisions of this Article other than
14 subsection (1); and

15 (b) the amount or value of any benefits received by the lessee directly or indirectly
16 by reason of the lease contract.

17 **Preliminary Comment**

18
19 The changes conform to amended Article 2.

20 21 22 **§ 2A–506. Statute of Limitations.**

23 (1) An action for default under a lease contract, including breach of warranty or
24 indemnity, must be commenced within 4 years after the cause of action accrued. ~~By the original~~

1 ~~lease contract the parties may reduce the period of limitation to not less than one year~~ Except in a
2 consumer lease or an action for indemnity, the original lease agreement may reduce the period of
3 limitations to not less than one year.

4 (2) A cause of action for default accrues when the act or omission on which the default or
5 breach of warranty is based is or should have been discovered by the aggrieved party, or when the
6 default occurs, whichever is later. A cause of action for indemnity accrues when the act or
7 omission on which the claim for indemnity is based is or should have been discovered by the
8 indemnified party, whichever is later.

9 (3) If an action commenced within the time limited by subsection (1) is so terminated as to
10 leave available a remedy by another action for the same default or breach of warranty or
11 indemnity, the other action may be commenced after the expiration of the time limited and within
12 6 months after the termination of the first action unless the termination resulted from voluntary
13 discontinuance or from dismissal for failure or neglect to prosecute.

14 (4) This section does not alter the law on tolling of the statute of limitations nor does it
15 apply to causes of action that have accrued before this Article becomes effective.

16 **Preliminary Comment**

17 The change to subsection (a) conforms to amended Article 2.
18
19
20

21 **§ 2A–507A. Lessee's Right to Specific Performance or Replevin or the Like.**

22 (1) Specific performance may be decreed if the goods are unique or in other proper
23 circumstances. In a contract other than a consumer contract, specific performance may be
24 decreed if the parties have agreed to that remedy. However, even if the parties agree to specific

1 performance, specific performance may not be decreed if the breaching party's sole remaining
2 contractual obligation is the payment of money.

3 (2) A decree for specific performance may include any terms and conditions as to payment
4 of the rent, damages, or other relief that the court deems just.

5 (3) A lessee has a right of replevin, ~~detinue, sequestration, claim and delivery,~~ or the like
6 for goods identified to the lease contract if after reasonable effort the lessee is unable to effect
7 cover for those goods or the circumstances reasonably indicate that the effort will be unavailing or
8 the goods have been shipped under reservation and satisfaction of the security interest in them has
9 been made or tendered.

10 **Preliminary Comment**

11
12 1. This provision has been moved from its former location, Section 2A-521, because it
13 has been amended in such a manner that it is available to both lessors and lessees. Section 2A-
14 521 is in Part B (Default by Lessor).

15
16 2. The changes conform to amended Article 2.

17
18 3. The word "lessee" has been removed from the title to make it clear that either the
19 lessor or the lessee may obtain a decree of specific performance in an appropriate circumstance.

20
21 *Legislative Note: To maintain its relative position in this Act, Section 2A-507A may have*
22 *to be renumbered according to the convention used by a particular state. For example,*
23 *in some states it may be designated as 2A-507.1.*

24 25 26 **B. DEFAULT BY LESSOR**

27 28 29 **§ 2A-508. Lessee's Remedies.**

30 ~~(1) If a lessor fails to deliver the goods in conformity to the lease contract (Section~~
31 ~~2A-509) or repudiates the lease contract (Section 2A-402), or a lessee rightfully rejects the~~

1 ~~goods (Section 2A-509) or justifiably revokes acceptance of the goods (Section 2A-517), then~~
2 ~~with respect to any goods involved, and with respect to all of the goods if under an installment~~
3 ~~lease contract the value of the whole lease contract is substantially impaired (Section 2A-510),~~
4 ~~the lessor is in default under the lease contract and the lessee may:~~

5 ~~(a) cancel the lease contract (Section 2A-505(1));~~

6 ~~(b) recover so much of the rent and security as has been paid and is just under the~~
7 ~~circumstances;~~

8 ~~(c) cover and recover damages as to all goods affected whether or not they have~~
9 ~~been identified to the lease contract (Sections 2A-518 and 2A-520), or recover damages~~
10 ~~for nondelivery (Sections 2A-519 and 2A-520);~~

11 ~~(d) exercise any other rights or pursue any other remedies provided in the lease~~
12 ~~contract.~~

13 ~~(2) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates~~
14 ~~the lease contract, the lessee may also:~~

15 ~~(a) if the goods have been identified, recover them (Section 2A-522); or~~

16 ~~(b) in a proper case, obtain specific performance or replevy the goods (Section 2A-521).~~

17 (1) If the lessor fails to deliver the goods in conformity to the lease contract or repudiates
18 the contract, or a lessee rightfully rejects the goods or justifiably revokes acceptance of the goods,
19 the lessor is in default under the lease contract, and the lessee may do one or more of the
20 following:

21 (a) cancel the lease contract under Section 2A-505(1);

22 (b) recover so much of the rent and security as has been paid and is just under the

1 circumstances;

2 (c) cover and obtain damages under Section 2A-518;

3 (d) recover damages for nondelivery under Section 2A-519(1);

4 (e) if an acceptance of goods has not been justifiably revoked, recover damages for
5 default with regard to accepted goods under Section 2A-519(3) and (4);

6 (f) enforce a security interest under subsection (4);

7 (g) recover identified goods under Section 2A-522;

8 (h) obtain specific performance under Section 2A-521;

9 (i) recover liquidated damages under Section 2A-504;

10 (j) enforce limited remedies under Section 2A-503; or

11 (k) exercise any other rights or pursue any other remedy provided in the lease

12 contract.

13 ~~(3)~~ (2) If a lessor is otherwise in default under a lease contract, the lessee may exercise the
14 rights and pursue the remedies provided in the lease contract, which may include a right to cancel
15 the lease, and in Section 2A-519(3).

16 ~~(4)~~ (3) If a lessor has breached a warranty, whether express or implied, the lessee may
17 recover damages (Section 2A-519(4)).

18 ~~(5)~~ (4) On rightful rejection or justifiable revocation of acceptance, a lessee has a security
19 interest in goods in the lessee's possession or control for any rent and security that has been paid
20 and any expenses reasonably incurred in their inspection, receipt, transportation, and care and
21 custody and may hold those goods and dispose of them in good faith and in a commercially
22 reasonable manner, subject to Section 2A-527(5).

~~(6)~~ (5) Subject to the provisions of Section 2A-407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

Preliminary Comment

This section is revised along the lines of amended Article 2 to give a more complete list of remedies.

§ 2A-509. Lessee's Rights on Improper Delivery; Rightful Manner and Effect of Rejection.

~~(1) Subject to the provisions of Section 2A-510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.~~

~~(2) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.~~

(1) Subject to Sections 2A-503, 2A-504, and 2A-510, if the goods or the tender of delivery fail in any respect to conform to the contract, the lessee may:

(a) reject the whole;

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest.

(2) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the lessee seasonably notifies the lessor or supplier.

(3) Subject to Sections 2A-511, 2A-512, and 2A-517(f):

(a) after rejection any use by the lessee with respect to any commercial unit is

1 wrongful as against the lessor or supplier; and

2 (b) if the lessee has before rejection taken physical possession of goods in which
3 the lessee does not have a security interest under Section 2A–508(e), the lessee is under a
4 duty after rejection to hold them with reasonable care at the lessor’s or supplier’s
5 disposition for a time sufficient to permit the lessor or supplier to remove them; but

6 (c) the lessee has no further obligations with regard to goods rightfully rejected.

7 (d) The lessor's or supplier’s remedies with respect to goods wrongfully rejected
8 are governed by Section 2A–523.

9 **Preliminary Comment**

10
11 This section conforms with amended Article 2, except that its provisions are contained in
12 two sections in amended Article 2.

13
14
15 **§ 2A–510. Installment Lease Contracts: Rejection and Default.**

16 (1) Under an installment lease contract a lessee may reject any delivery that is
17 nonconforming if the nonconformity substantially impairs the value of that delivery to the lessee
18 ~~and cannot be cured~~ or the nonconformity is a defect in the required documents; but if the
19 nonconformity does not fall within subsection (2) and the lessor or the supplier gives adequate
20 assurance of its cure, the lessee must accept that delivery.

21 (2) Whenever nonconformity or default with respect to one or more deliveries
22 substantially impairs the value of the installment lease contract as a whole there is a default with
23 respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole
24 if the aggrieved party accepts a nonconforming delivery without seasonably notifying of
25 cancellation or brings an action with respect only to past deliveries or demands performance as to

1 future deliveries.

2 **Preliminary Comment**

3
4 The changes conform to amended Article 2.

5
6
7 **§ 2A–511. Merchant Lessee's Duties as to ~~Rightfully~~ Rejected Goods.**

8 (1) Subject to any security interest of a lessee (Section 2A–508(4)), if a lessor or a
9 supplier has no agent or place of business at the market of rejection, a merchant lessee, after
10 rejection of goods in his ~~for her~~ the lessee's possession or control, shall follow any reasonable
11 instructions received from the lessor or the supplier with respect to the goods. In the absence of
12 those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise
13 dispose of the goods for the lessor's account if they threaten to decline in value speedily.
14 ~~Instructions~~ In the case of a rightful rejection instructions are not reasonable if on demand
15 indemnity for expenses is not forthcoming.

16 (2) If a merchant lessee (subsection (1)) or any other lessee (Section 2A–512) disposes of
17 goods following a rightful rejection, ~~he for she~~ the lessee is entitled to reimbursement either from
18 the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and
19 disposing of the goods and, if the expenses include no disposition commission, to such
20 commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding 10
21 percent of the gross proceeds.

22 (3) In complying with this section or Section 2A–512, the lessee is held only to good faith.
23 Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for
24 damages.

(4) A purchaser who purchases in good faith from a lessee pursuant to this section or Section 2A-512 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this Article.

Preliminary Comment

The changes conform to amended Article 2.

§ 2A-512. Lessee's Duties as to ~~Rightfully~~ Rejected Goods.

(1) Except as otherwise provided with respect to goods that threaten to decline in value speedily (Section 2A-511) and subject to any security interest of a lessee (Section 2A-508(4)):

(a) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(b) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in Section 2A-511; but

(c) the lessee has no further obligations with regard to goods rightfully rejected.

(2) Action by the lessee pursuant to subsection (1) is not acceptance or conversion.

Preliminary Comment

The change in the title conforms to amended Article 2.

§ 2A-513. Cure by Lessor of Improper Tender or Delivery; Replacement.

1 ~~(1) If any tender or delivery by the lessor or the supplier is rejected because~~
2 ~~nonconforming and the time for performance has not yet expired, the lessor or the supplier may~~
3 ~~seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a~~
4 ~~conforming delivery within the time provided in the lease contract.~~

5 ~~(2) If the lessee rejects a nonconforming tender that the lessor or the supplier had~~
6 ~~reasonable grounds to believe would be acceptable with or without money allowance, the lessor~~
7 ~~or the supplier may have a further reasonable time to substitute a conforming tender if he [or she]~~
8 ~~seasonably notifies the lessee.~~

9 (1) Where the lessee rejects goods or a tender of delivery under Section 2A-509 or 2A-
10 510 or except in a consumer contract justifiably revokes acceptance under Section 2A-517(a)(2)
11 and the agreed time for performance has not expired, a lessor or the supplier that has performed in
12 good faith, upon seasonable notice to the lessee and at the lessor's or supplier's own expense,
13 may cure the default by making a conforming tender of delivery within the agreed time. The lessor
14 or supplier shall compensate the lessee for all of the lessee's reasonable expenses caused by the
15 lessor's or supplier's default and subsequent cure.

16 (2) Where the lessee rejects goods or a tender of delivery under Section 2A-509 or 2A-
17 510 or except in a consumer lease justifiably revokes acceptance under Section 2A-517 and the
18 agreed time for performance has expired, a lessor or supplier that has performed in good faith
19 may, upon seasonable notice to the lessee and at the lessor's or supplier's own expense, cure the
20 default if the cure is appropriate and timely under the circumstances, by making a tender of
21 conforming goods. The lessor or supplier shall compensate the lessee for all of the lessee's
22 reasonable expenses caused by the lessor's or supplier's default and subsequent cure.

1 Preliminary Comment

2
3 The changes conform to amended Article 2.

4
5
6 **§ 2A-514. Waiver of Lessee's Objections.**

7 ~~(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by~~
8 ~~reasonable inspection precludes the lessee from relying on the defect to justify rejection or to~~
9 ~~establish default:~~

10 ~~(a) if, stated seasonably, the lessor or the supplier could have cured it (Section 2A-513);~~

11 ~~or~~

12 ~~(b) between merchants if the lessor or the supplier after rejection has made a request in writing for~~
13 ~~a full and final written statement of all defects on which the lessee proposes to rely.~~

14 (1) The lessee's failure to state in connection with rejection a particular defect or in
15 connection with revocation of acceptance a defect which justifies revocation precludes the lessee
16 from relying on the unstated defect to justify rejection or revocation of acceptance if the defect is
17 ascertainable by reasonable inspection

18 (a) where the lessor had a right to cure the defect and could have cured it if stated
19 seasonably; or

20 (b) between merchants if the lessor or the supplier after rejection has made a
21 request in a record for a full and final written statement of all defects on which the lessee
22 proposes to rely.

23 (2) A lessee's failure to reserve rights when paying rent or other consideration against

documents precludes recovery of the payment for defects apparent on the face of the documents.

Preliminary Comment

The changes conform to amended Article 2.

§ 2A–515. Acceptance of Goods.

~~(1) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and~~

~~(a) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or~~

~~(b) the lessee fails to make an effective rejection of the goods (Section 2A–509(2)).~~

(1) Acceptance of goods occurs when the lessee:

(a) after a reasonable opportunity to inspect the goods signifies to the lessor or supplier that the goods are conforming or will be taken or retained in spite of their nonconformity;

(b) fails to make an effective rejection under Section 2A–509(2), but such acceptance does not occur until the lessee has had a reasonable opportunity to inspect them; or

(c) except as otherwise provided in Section 2A-517(6), uses the goods in any manner that is inconsistent with the lessor's or supplier's rights; but if such act is ratified by the seller it is an acceptance.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Preliminary Comment

The changes conform to amended Article 2.

§ 2A-516. Effect of Acceptance of Goods; Notice of Default; Burden of Establishing Default After Acceptance; Notice of Claim or Litigation to Person Answerable Over.

(1) A lessee must pay rent for any goods accepted in accordance with the lease contract;
~~with due allowance for goods rightfully rejected or not delivered.~~

(2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this Article or the lease agreement for nonconformity.

(3) If a tender has been accepted:

(a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any or be barred from any

1 ~~remedy against the party not notified ;however, failure to give timely notice bars the lessee~~
2 ~~from a remedy only to the extent that the lessor or supplier is prejudiced by the failure;~~

3 (b) except in the case of a consumer lease, within a reasonable time after the lessee
4 receives notice of litigation for infringement or the like (Section 2A–211) the lessee shall
5 notify the lessor or be barred from any remedy over for liability established by the
6 litigation; and

7 (c) the burden is on the lessee to establish any default.

8 (4) If a lessee is sued for indemnity, breach of a warranty or other obligation for which a
9 ~~lessor or a supplier~~ another party is answerable over the following rules apply:

10 (a) The lessee may give ~~the lessor or the supplier, or both, written~~ the other party
11 notice of the litigation in a record. If the notice states that the person notified may come
12 in and defend and that if the person notified does not do so that person will be bound in
13 any action against that person by the lessee by any determination of fact common to the
14 two litigations, then unless the person notified after seasonable receipt of the notice does
15 come in and defend that person is so bound.

16 (b) The ~~lessor or the supplier~~ other party may demand in ~~writing~~ a record that the
17 lessee turn over control of the litigation including settlement if the claim is one for
18 infringement or the like (Section 2A–211) or else be barred from any remedy over. If the
19 demand states that the ~~lessor or the supplier~~ other party agrees to bear all expense and to
20 satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand

1 does turn over control the lessee is so barred.

2 (5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the
3 supplier harmless against infringement or the like (Section 2A–211).

4 **Preliminary Comment**

5
6 The changes conform to amended Article 2.

7
8
9 **§ 2A–517. Revocation of Acceptance of Goods.**

10 (1) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity
11 substantially impairs its value to the lessee if the lessee has accepted it:

12 (a) except in the case of a finance lease, on the reasonable assumption that its
13 nonconformity would be cured and it has not been seasonably cured; or

14 (b) without discovery of the nonconformity if the lessee's acceptance was
15 reasonably induced either by the lessor's assurances or, except in the case of a finance
16 lease, by the difficulty of discovery before acceptance.

17 (2) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke
18 acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the
19 default substantially impairs the value of that lot or commercial unit to the lessee.

20 (3) If the lease agreement so provides, the lessee may revoke acceptance of a lot or
21 commercial unit because of other defaults by the lessor.

1 (4) Revocation of acceptance must occur within a reasonable time after the lessee
2 discovers or should have discovered the ground for it and before any substantial change in
3 condition of the goods which is not caused by the nonconformity. Revocation is not effective
4 until the lessee notifies the lessor.

5 (5) A lessee who so revokes has the same rights and duties with regard to the goods
6 involved as if the lessee had rejected them.

7 (6) If a lessee uses the goods after a rightful rejection or justifiable revocation of
8 acceptance, the following rules apply:

9 (a) Any use by the lessee that is unreasonable under the circumstances is wrongful
10 as against the lessor or supplier and is an acceptance only if ratified by the lessor or
11 supplier under Section 2-515(1)(c).

12 (b) Any use of the goods that is reasonable under the circumstances is not
13 wrongful as against the lessor or supplier and is not an acceptance, but in an appropriate
14 case the lessee shall be obligated to the lessor or supplier for the value of the use to the
15 lessee.

16
17 **Preliminary Comment**

18
19 The addition of subsection (6) conforms to amended Article 2.
20
21

1 **§ 2A-521. ~~Lessee's Right to Specific Performance or Replevin~~ Reserved.**

2
3 **Preliminary Comment**
4

5 The section on specific performance has been moved to Section 2A-507A because it has
6 been amended so that the remedy is available to both lessors and lessees. Section 2A-521 is in
7 Part B (Default by Lessor).
8
9

10 **§ 2A-522. Lessee's Right to Goods on Lessor's Insolvency.**

11 (1) Subject to subsection (2) and even though the goods have not been shipped, a lessee
12 who has paid a part or all of the rent and security for goods identified to a lease contract (Section
13 2A-217) on making and keeping good a tender of any unpaid portion of the rent and security due
14 under the lease contract may recover the goods identified from the lessor if ~~the lessor becomes~~
15 ~~insolvent within 10 days after receipt of the first installment of rent and security.~~

16 (a) in the case of goods leased by a consumer, the lessor repudiates or fails to deliver as
17 required by the lease contract; or

18 (b) in all cases, the lessor becomes insolvent within 10 days after receipt of the first
19 installment on their price.

20 (2) A lessee acquires the right to recover goods identified to a lease contract only if they
21 conform to the lease contract.

22 **Preliminary Comment**
23

1 The changes conform to amended Article 2.

2
3
4 C. DEFAULT BY LESSEE

5
6 **§ 2A-523. Lessor's Remedies.**

7 ~~(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a~~
8 ~~payment when due or repudiates with respect to a part or the whole, then, with respect to any~~
9 ~~goods involved, and with respect to all of the goods if under an installment lease contract the~~
10 ~~value of the whole lease contract is substantially impaired (Section 2A-510), the lessee is in~~
11 ~~default under the lease contract and the lessor may:~~

12 ~~(a) cancel the lease contract (Section 2A-505(1));~~

13 ~~(b) proceed respecting goods not identified to the lease contract (Section~~
14 ~~2A-524);~~

15 ~~(c) withhold delivery of the goods and take possession of goods previously~~
16 ~~delivered (Section 2A-525);~~

17 ~~(d) stop delivery of the goods by any bailee (Section 2A-526);~~

18 ~~(e) dispose of the goods and recover damages (Section 2A-527), or retain the~~
19 ~~goods and recover damages (Section 2A-528), or in a proper case recover rent (Section~~
20 ~~2A-529);~~

21 ~~(f) exercise any other rights or pursue any other remedies provided in the lease~~

1 contract:

2 (1) If the lessee wrongfully rejects or revokes acceptance of goods or fails to make a
3 payment when due or repudiates with respect to a part or the whole, the lessee is in default under
4 the lease contract with respect to any goods involved and the lessor may do one or more of the
5 following:

6 (a) withhold delivery of the goods and take possession of goods previously
7 delivered under section 2A-525;

8 (b) stop delivery of the goods by any carrier or bailee under Section 2A-526;

9 (c) proceed under Section 2A-524 with respect to goods still unidentified to the
10 lease contract or unfinished;

11 (d) obtain specific performance under Section 2A-507A or recover the rent under
12 Section 2A-529;

13 (e) dispose of the goods and recover damages under Section 2A-527 or retain the
14 goods and recover damages under Section 2A-528;

15 (f) cancel the lease contract under Section 2A-505(1);

16 (g) recover liquidated damages under Section 2A-504;

17 (h) enforce limited remedies under Section 2A-503;

18 (i) exercise any other rights or pursue any other remedies provided in the lease

1 agreement.

2 (2) If a lessee becomes insolvent but is not in default of the lease contract under
3 subsections (1) or (4), the lessor may:

4 (a) refuse to deliver the goods under subsection (1) of Section 2A-525;

5 (b) take possession of the goods under subsection (2) of Section 2A-525; or

6 (c) stop delivery of the goods by any bailee or carrier under subsection (1) of
7 Section 2A-526.

8 ~~(2)~~ (3) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is
9 entitled under subsection (1), the lessor may recover the loss resulting in the ordinary course of
10 events from the lessee's default as determined in any reasonable manner, together with incidental
11 or consequential damages allowed under Section 2A-530, less expenses saved in consequence of
12 the lessee's default.

13 ~~(3)~~ (4) If a lessee is otherwise in default under a lease contract, the lessor may exercise the
14 rights and pursue the remedies provided in the lease contract, which may include a right to cancel
15 the lease. In addition, unless otherwise provided in the lease contract:

16 (a) if the default substantially impairs the value of the lease contract to the lessor,
17 the lessor may exercise the rights and pursue the remedies provided in subsections (1) or
18 (2); or

19 (b) if the default does not substantially impair the value of the lease contract to the

lessor, the lessor may recover as provided in subsection (2).

Preliminary Comment

Subsection (1) is revised along the lines of amended Article 2 to give a more complete list of remedies. Also in accord with amended Article 2, subsection (2) now states the lessor's remedies upon the lessee's insolvency.

§ 2A-526. Lessor's Stoppage of Delivery in Transit or Otherwise.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent ~~and may stop delivery of carload, truckload, plane load, or larger shipments of express or freight if~~ when the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

1 (b) After notification, the bailee shall hold and deliver the goods according to the
2 directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or
3 damages.

4 (c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a
5 notification to stop received from a person other than the consignor.

6 **Preliminary Comment**

7
8 The change in subsection (1) conforms to amended Article 2.

9
10 **§ 2A–527. Lessor's Rights to Dispose of Goods.**

11 (1) After a default by a lessee under the lease contract of the type described in Section
12 2A–523(1) or 2A–523(4)(a) or after the lessor refuses to deliver or takes possession of goods
13 (Section 2A–525 or 2A–526), or, if agreed, after other default by a lessee, the lessor may dispose
14 of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

15 (2) Except as otherwise provided with respect to damages liquidated in the lease
16 agreement (Section 2A–504) or otherwise determined pursuant to agreement of the parties
17 (Sections 1–302) and 2A–503), if the disposition is by lease agreement substantially similar to the
18 original lease agreement and the new lease agreement is made in good faith and in a commercially
19 reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent
20 as of the date of the commencement of the term of the new lease agreement, (ii) the present value,
21 as of the same date, of the total rent for the then remaining lease term of the original lease
22 agreement minus the present value, as of the same date, of the rent under the new lease agreement

1 applicable to that period of the new lease term which is comparable to the then remaining term of
2 the original lease agreement, and (iii) any incidental or consequential damages allowed under
3 Section 2A-530, less expenses saved in consequence of the lessee's default.

4 (3) If the lessor's disposition is by lease agreement that for any reason does not qualify for
5 treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee
6 as if the lessor had elected not to dispose of the goods and Section 2A-528 governs.

7 (4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for
8 value as a result of a disposition under this section takes the goods free of the original lease
9 contract and any rights of the original lessee even though the lessor fails to comply with one or
10 more of the requirements of this Article.

11 (5) The lessor is not accountable to the lessee for any profit made on any disposition. A
12 lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for
13 any excess over the amount of the lessee's security interest (Section 2A-508(4)).

14
15 **§ 2A-528. Lessor's Damages for Non-acceptance, Failure to Pay, Repudiation, or Other**
16 **Default.**

17
18 (1) Except as otherwise provided with respect to damages liquidated in the lease
19 agreement (Section 2A-504) or otherwise determined pursuant to agreement of the parties
20 (Sections 1-302) and 2A-503), if a lessor elects to retain the goods or a lessor elects to dispose
21 of the goods and the disposition is by lease agreement that for any reason does not qualify for
22 treatment under Section 2A-527(2), or is by sale or otherwise, the lessor may recover from the

1 lessee as damages for a default of the type described in Section 2A–523(1) or 2A–523(4)(a), or, if
2 agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the
3 lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods,
4 as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a
5 tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i)
6 of the total rent for the then remaining lease term of the original lease agreement minus the
7 present value as of the same date of the market rent at the place where the goods are located
8 computed for the same lease term, and (iii) any incidental or consequential damages allowed
9 under Section 2A–530, less expenses saved in consequence of the lessee's default.

10 (2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as
11 good a position as performance would have, the measure of damages is the present value of the
12 profit, including reasonable overhead, the lessor would have made from full performance by the
13 lessee, together with any incidental or consequential damages allowed under Section 2A–530, ~~due~~
14 ~~allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.~~

15 **Preliminary Comment**

16
17 The changes conform to amended Article 2.
18
19

20 **§ 2A–529. Lessor's Action for the Rent.**

21 (1) After default by the lessee under the lease contract of the type described in Section
22 2A–523(1) or 2A–523(4)(a) or, if agreed, after other default by the lessee, if the lessor complies

1 with subsection (2), the lessor may recover from the lessee as damages:

2 (a) for goods accepted by the lessee and not repossessed by or tendered to the
3 lessor, and for conforming goods lost or damaged within a commercially reasonable time
4 after risk of loss passes to the lessee (Section 2A–219), (i) accrued and unpaid rent as of
5 the date of entry of judgment in favor of the lessor, (ii) the present value as of the same
6 date of the rent for the then remaining lease term of the lease agreement, and (iii) any
7 incidental or consequential damages allowed under Section 2A–530, less expenses saved
8 in consequence of the lessee's default; and

9 (b) for goods identified to the lease contract if the lessor is unable after reasonable
10 effort to dispose of them at a reasonable price or the circumstances reasonably indicate
11 that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of
12 judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the
13 then remaining lease term of the lease agreement, and (iii) any incidental or consequential
14 damages allowed under Section 2A–530, less expenses saved in consequence of the
15 lessee's default.

16 (2) Except as provided in subsection (3), the lessor shall hold for the lessee for the
17 remaining lease term of the lease agreement any goods that have been identified to the lease
18 contract and are in the lessor's control.

19 (3) The lessor may dispose of the goods at any time before collection of the judgment for
20 damages obtained pursuant to subsection (1). If the disposition is before the end of the remaining
21 lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed

1 by Section 2A–527 or Section 2A–528, and the lessor will cause an appropriate credit to be
2 provided against a judgment for damages to the extent that the amount of the judgment exceeds
3 the recovery available pursuant to Section 2A–527 or 2A–528.

4 (4) Payment of the judgment for damages obtained pursuant to subsection (1) entitles the
5 lessee to the use and possession of the goods not then disposed of for the remaining lease term of
6 and in accordance with the lease agreement.

7 (5) After default by the lessee under the lease contract of the type described in Section
8 2A–523(1) or Section 2A–523(4)(a) or, if agreed, after other default by the lessee, a lessor who is
9 held not entitled to rent under this section must nevertheless be awarded damages for
10 non-acceptance under Section 2A–527 or Section 2A–528.

11 **Preliminary Comment**

12
13 The changes conform to amended Article 2.
14
15

16 **§ 2A–530. Lessor's Incidental and Consequential Damages.**

17 (1) Incidental damages to an aggrieved lessor include any commercially reasonable
18 charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and
19 custody of goods after the lessee's default, in connection with return or disposition of the goods,
20 or otherwise resulting from the default.

21 (2) Consequential damages resulting from a lessee's default include any loss resulting from
22 general or particular requirements and needs of which the lessee at the time of contracting had

1 reason to know and which could not reasonably be prevented by disposition under Section 2A-
2 527 or otherwise.

3 (3) In a consumer lease contract, a lessor cannot recover consequential damages from a
4 consumer.

5 **Preliminary Comment**

6
7 The changes conform to amended Article 2.

8 9 10 **§ 2A–531. Standing to Sue Third Parties for Injury to Goods.**

11 (1) If a third party so deals with goods that have been identified to a lease contract as to
12 cause actionable injury to a party to the lease contract (a) the lessor has a right of action against
13 the third party, and (b) the lessee also has a right of action against the third party if the lessee:

14 (a)has a security interest in the goods;

15 (b)has an insurable interest in the goods; or

16 (c)bears the risk of loss under the lease contract or has since the injury assumed
17 that risk as against the lessor and the goods have been converted or destroyed.

18 (2) If at the time of the injury the party plaintiff did not bear the risk of loss as against the
19 other party to the lease contract and there is no arrangement between them for disposition of the
20 recovery, ~~his [or her]~~ the party plaintiff's suit or settlement, subject to ~~his [or her]~~ the party
21 plaintiff's own interest, is as a fiduciary for the other party to the lease contract.

(3) Either party with the consent of the other may sue for the benefit of whom it may concern.

PART 6

TRANSITION PROVISIONS

§ 2A-601. Effective Date.

This [Act] shall become effective on _____, 20__.

§ 2A-602. Amendment of Existing Article 2A.

This [Act] amends [insert citation to existing Article 2A].

§ 2A-603. Applicability.

This [Act] applies to a transaction within its scope that is entered into on or after the effective date of this [Act]. This [Act] does not apply to a transaction that is entered into before the effective date of this [Act] even if the transaction would be subject to this [Act] if it had been entered into after the effective date of this [Act]. This [Act] does not apply to a cause of action that has accrued before the effective date of this [Act].

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3 **§ 2A-604. Savings Clause.**

4 A transaction entered into before the effective date of this [Act] and the rights, obligations, and
5 interests flowing from that transaction are governed by any statute or other law amended or
6 repealed by this [Act] as if amendment or repeal had not occurred and may be terminated,
7 completed, consummated, or enforced under that statute or other law.