

D R A F T
FOR APPROVAL

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

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UNIFORM COMMERCIAL CODE ARTICLE 2A – LEASES**

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

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.

Both Articles 2 and 2A received tentative approval from the ALI at its annual meeting in May, 2001. Unless changes of substance are made at the Annual Meeting of the Conference, the drafts will be eligible for final ALI approval at the meeting of the Council next December.

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

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**PART 1
GENERAL PROVISIONS**

6

SECTION 2A-103. DEFINITIONS AND INDEX OF DEFINITIONS.

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

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

16

Preliminary Comments

17 The definition of this term is in Section 1-201(9), as amended by the Article
18 9 revision process.

19 (b) ~~(a)~~ “Cancellation” occurs when either party puts an end to the lease
20 contract for default by the other party.

21 (c) ~~(b)~~ “Commercial unit” means such a unit of goods as by commercial
22 usage is a single whole for purposes of lease and division of which materially impairs

1 its character or value on the market or in use. A commercial unit may be a single
2 article, as a machine, or a set of articles, as a suite of furniture or a line of
3 machinery, or a quantity, as a gross or carload, or any other unit treated in use or in
4 the relevant market as a single whole.

5 ~~(d)~~ (c) “Conforming” goods or performance under a lease contract
6 means goods or performance that are in accordance with the obligations under the
7 lease contract.

8 (d) “Conspicuous”, with reference to a term, means so written,
9 displayed, or presented that a reasonable person against which it is to operate ought
10 to have noticed it. A term in an electronic record intended to evoke a response by
11 an electronic agent is conspicuous if it is presented in a form that would enable a
12 reasonably configured electronic agent to take it into account or react to it without
13 review of the record by an individual. Whether a term is “conspicuous” or not is a
14 decision for the court. 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
18 same 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
21 the same size, or set off from surrounding text of the same size by symbols or other
22 marks that call attention to the language; and

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

3 **Preliminary Comments**

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

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

10 **Preliminary Comments**

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

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

17 **Preliminary Comments**

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

20 (j) “Electronic record” means a record created, generated, sent,
21 communicated, received, or stored by electronic means.

22 **Preliminary Comments**

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

1 ~~(f)~~ (k) “Fault” means wrongful act, omission, breach, or default.

2 **Preliminary Comments**

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

4 ~~(g)~~ “Finance lease” means a lease with respect to which:

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

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

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

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

12 ~~(B)~~ the lessee’s approval of the contract by which the lessor
13 acquired the goods or the right to possession and use of the goods is a condition to
14 effectiveness of the lease contract;

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

1 ~~(D) if the lease is not a consumer lease, the lessor, before the~~
2 ~~lessee signs the lease contract, informs the lessee in writing (a) of the identity of the~~
3 ~~person supplying the goods to the lessor, unless the lessee has selected that person~~
4 ~~and directed the lessor to acquire the goods or the right to possession and use of the~~
5 ~~goods from that person, (b) that the lessee is entitled under this Article to the~~
6 ~~promises and warranties, including those of any third party, provided to the lessor~~
7 ~~by the person supplying the goods in connection with or as part of the contract by~~
8 ~~which the lessor acquired the goods or the right to possession and use of the goods,~~
9 ~~and (c) that the lessee may communicate with the person supplying the goods to the~~
10 ~~lessor and receive an accurate and complete statement of those promises and~~
11 ~~warranties, including any disclaimers and limitations of them or of remedies.~~

12 (l) “Finance lease” means a lease with respect to which:

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

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

18 (iii) one of the following occurs:

19 (A) the lessee receives a copy of the agreement by which the
20 lessor acquired, or proposes to acquire, the goods or the right to possession and use
21 of the goods before signing the lease agreement;

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

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

12 (D) if the lease is not a consumer lease, before the lessee signs
13 the lease agreement, the lessor informs the lessee in a record:

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

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

21 (III) that the lessee may communicate with the person
22 supplying the goods to the lessor and receive an accurate and complete statement of

1 those promises and warranties, including any disclaimers and limitations of them, or
2 a statement of remedies.

3 **Preliminary Comments**

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

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

9 **Preliminary Comments**

10 The definition of “good faith” may be moved to revised Article 1.

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

17 **Preliminary Comments**

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

22 ~~(i)~~ (o) “Installment lease contract” means a lease contract that
23 authorizes or requires the delivery of goods in separate lots to be separately

1 accepted, even though the lease contract contains a clause “each delivery is a
2 separate lease” or its equivalent.

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

7 **Preliminary Comments**

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

10 ~~(k)~~ (q) “Lease agreement” means the bargain, with respect to the lease,
11 of the lessor and the lessee in fact as found in their language or by implication from
12 other circumstances including course of dealing or usage of trade or course of
13 performance as provided in this Article. Unless the context clearly indicates
14 otherwise, the term includes a sublease agreement.

15 ~~(l)~~ (r) “Lease contract” means the total legal obligation that results from
16 the lease agreement as affected by this Article and any other applicable rules of law.
17 Unless the context clearly indicates otherwise, the term includes a sublease contract.

18 ~~(m)~~ (s) “Leasehold interest” means the interest of the lessor or the lessee
19 under a lease contract.

20 ~~(n)~~ (t) “Lessee” means a person who acquires the right to possession
21 and use of goods under a lease. Unless the context clearly indicates otherwise, the
22 term includes a sublessee.

1 ~~(o) “Lessee in ordinary course of business” means a person who in good~~
2 ~~faith and without knowledge that the lease to him [or her] is in violation of the~~
3 ~~ownership rights or security interest or leasehold interest of a third party in the~~
4 ~~goods, leases in ordinary course from a person in the business of selling or leasing~~
5 ~~goods of that kind but does not include a pawnbroker. “Leasing” may be for cash~~
6 ~~or by exchange of other property or on secured or unsecured credit and includes~~
7 ~~receiving goods or documents of title under a pre-existing lease contract but does~~
8 ~~not include a transfer in bulk or as security for or in total or partial satisfaction of a~~
9 ~~money debt.~~

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

1 **Preliminary Comments**

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

5 ~~(p)~~ (v) “Lessor” means a person who transfers the right to possession
6 and use of goods under a lease. Unless the context clearly indicates otherwise, the
7 term includes a sublessor.

8 ~~(q)~~ (w) “Lessor’s residual interest” means the lessor’s interest in the
9 goods after expiration, termination, or cancellation of the lease contract.

10 ~~(r)~~ (x) “Lien” means a charge against or interest in goods to secure
11 payment of a debt or performance of an obligation, but the term does not include a
12 security interest.

13 ~~(s)~~ (y) “Lot” means a parcel or a single article that is the subject matter
14 of a separate lease or delivery, whether or not it is sufficient to perform the lease
15 contract.

16 ~~(t)~~ (z) “Merchant lessee” means a lessee that is a merchant with respect
17 to goods of the kind subject to the lease.

18 ~~(u)~~ (aa) “Present value” means the amount as of a date certain of one or
19 more sums payable in the future, discounted to the date certain. The discount is
20 determined by the interest rate specified by the parties if the rate was not manifestly
21 unreasonable at the time the transaction was entered into; otherwise, the discount is
22 determined by a commercially reasonable rate that takes into account the facts and
23 circumstances of each case at the time the transaction was entered into.

1 (z) (hh) “Termination” occurs when either party pursuant to a power
2 created by agreement or law puts an end to the lease contract otherwise than for
3 default.

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

6 “Accessions”. Section 2A-310(1).

7 “Construction mortgage”. Section 2A-309(1)(d).

8 “Encumbrance”. Section 2A-309(1)(e).

9 “Fixtures”. Section 2A-309(1)(a).

10 “Fixture filing”. Section 2A-309(1)(b).

11 “Purchase money lease”. Section 2A-309(1)(c).

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

13 ~~“Account”. Section 9-106.~~

14 “Between merchants”. Section 2-104(3).

15 “Buyer”. Section 2-103(1)(a).

16 ~~“Chattel paper”. Section 9-105(1)(b).~~

17 “Consumer goods”. Section 9-109(1).

18 ~~“Document”. Section 9-105(1)(f).~~

19 “Entrusting”. Section 2-403(3).

20 ~~“General intangibles”. Section 9-106.~~

21 ~~“Good faith”. Section 2-103(1)(j).~~

22 ~~“Instrument”. Section 9-105(1)(i).~~

- 1 “Merchant”. Section 2-104(1).
- 2 “Mortgage”. Section ~~9-105(1)(j)~~ 9-102(a)(55).
- 3 “Pursuant to commitment”. Section ~~9-105(1)(k)~~ 9-102(a)(68).
- 4 “Receipt of goods”. Section 2-103(1)(k).
- 5 “Sale”. Section 2-106(1).
- 6 “Sale on approval”. Section 2-326.
- 7 “Sale or return”. Section 2-326.
- 8 “Seller”. Section 2-103(1)(n).

9 (4) In addition Article 1 contains general definitions and principles of
10 construction and interpretation applicable throughout this Article.

11 *Legislative Note: The cross-references to “mortgage” and “pursuant to*
12 *commitment” in subsection (3) should not be changed if the jurisdiction has not*
13 *adopted revised Article 9.*

14 **SECTION 2A-104. LEASES SUBJECT TO OTHER LAW.**

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

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

19 (b) certificate of title statute of another jurisdiction (Section 2A-105); or

20 (c) ~~consumer protection statute of this State, or final consumer~~
21 ~~protection decision of a court of this State existing on the effective date of this~~

1 Article, or rule or decision of a court or administrative agency, that establishes a
2 different rule for consumers.

3 (2) In case of conflict between this Article, other than Sections 2A-105,
4 2A-304(3), and 2A-305(3), and a statute or decision referred to in subsection (1),
5 the statute or decision controls.

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

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

12 **Preliminary Comments**

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

15 **SECTION 2A-105. TERRITORIAL APPLICATION OF ARTICLE TO**
16 **GOODS COVERED BY CERTIFICATE OF TITLE.** Subject to the provisions
17 of Sections 2A-304(3) and 2A-305(3), with respect to goods covered by a
18 certificate of title issued under a statute of this State or of another jurisdiction,
19 compliance and the effect of compliance or noncompliance with a certificate of title
20 statute are governed by the law (including the conflict of laws rules) of the
21 jurisdiction issuing the certificate until the earlier of (a) surrender of the certificate;

1 or (b) four months after the goods are removed from that jurisdiction and thereafter
2 until a new certificate of title is issued by another jurisdiction.

3 (1) This section applies to goods covered by a certificate of title, even if
4 there is no other relationship between the jurisdiction under whose certificate-of-title
5 law the goods are covered and the goods or the lessee or lessor.

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

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

18 **Preliminary Comments**

19 This section conforms with revised Article 9.

20 **~~SECTION 2A-107. WAIVER OR RENUNCIATION OF CLAIM OR~~**
21 **~~RIGHT AFTER DEFAULT RESERVED.~~** Any claim or right arising out of an

1 ~~alleged default or breach of warranty may be discharged in whole or in part without~~
2 ~~consideration by a written waiver or renunciation signed and delivered by the~~
3 ~~aggrieved party.~~

4 **Preliminary Comments**

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

6 **SECTION 2A-108. UNCONSCIONABILITY.**

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

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

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

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

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

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

7 (c) In determining attorney’s fees, the amount of the recovery on behalf
8 of the claimant under subsections (1) and (2) is not controlling.

9 **SECTION 2A-109. OPTION TO ACCELERATE AT WILL.**

10 (1) A term providing that one party or ~~his [or her]~~ the party’s successor in
11 interest may accelerate payment or performance or require collateral or additional
12 collateral “at will” or “when ~~he [or she]~~ the party deems ~~himself [or herself]~~ itself
13 insecure” or in words of similar import must be construed to mean that ~~he [or she]~~
14 the party has power to do so only if ~~he [or she]~~ the party in good faith believes that
15 the prospect of payment or performance is impaired.

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

20 **PART 2**
21 **FORMATION AND CONSTRUCTION OF**
22 **LEASE CONTRACT; ELECTRONIC CONTRACTING**

1 **SECTION 2A-201. STATUTE OF FRAUDS.**

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

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

5 (b) there is a writing record, signed by the party against whom
6 enforcement is sought or by that party's authorized agent, sufficient to indicate that
7 a lease contract has been made between the parties and to describe the goods leased
8 and the lease term.

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

12 (3) A writing record is not insufficient because it omits or incorrectly states
13 a term agreed upon, ~~but~~ ; however, the record must contain a quantity term and the
14 lease contract is not enforceable under subsection (1)(b) beyond the lease term and
15 the quantity of goods shown in the writing record.

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

18 (a) if the goods are to be specially manufactured or obtained for the
19 lessee and are not suitable for lease or sale to others in the ordinary course of the
20 lessor's business, and the lessor, before notice of repudiation is received and under
21 circumstances that reasonably indicate that the goods are for the lessee, has made

1 either a substantial beginning of their manufacture or commitments for their
2 procurement;

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

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

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

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

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

16 (c) a reasonable lease term.

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

20 **Preliminary Comments**

21 The changes to this section conform to amended Article 2.

1 **SECTION 2A-204. FORMATION IN GENERAL.**

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

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

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

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

12 (a) A lease contract may be formed by the interaction of electronic
13 agents. If the interaction resulting from the electronic agents' engaging in
14 operations shows an agreement sufficient to constitute a lease contract under this
15 section, a lease contract is formed.

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

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

1 **SECTION 2A-211. WARRANTIES AGAINST INTERFERENCE AND**
2 **AGAINST INFRINGEMENT; LESSEE’S OBLIGATION AGAINST**
3 **INFRINGEMENT.**

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

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

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

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

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

20 (b) a colorable claim to or interest in the goods which will unreasonably
21 expose the lessee to litigation.

1 determine whether goods are merchantable when recovery is sought for injury to
2 person or property.

3 **SECTION 2A-214. EXCLUSION OR MODIFICATION OF**
4 **WARRANTIES.**

5 (1) Words or conduct relevant to the creation of an express warranty and
6 words or conduct tending to negate or limit a warranty must be construed wherever
7 reasonable as consistent with each other; but, subject to the provisions of Section
8 2A-202 on parol or extrinsic evidence, negation or limitation is inoperative to the
9 extent that the construction is unreasonable.

10 (2) Subject to subsection (3), to exclude or modify the implied warranty of
11 merchantability or any part of it the language must be in a record and be
12 conspicuous. In a consumer lease the language must state “The lessor undertakes
13 no responsibility for the quality of the goods except as otherwise provided in this
14 contract.” and in any other contract the language must mention merchantability and
15 in case of a writing record must be conspicuous, and to. Subject to subsection (3),
16 to exclude or modify the implied warranty of fitness the exclusion must be by a
17 writing in a record and be conspicuous. Language to exclude all implied warranties
18 of fitness in a consumer lease must state “The lessor assumes no responsibility that
19 the goods will be fit for any particular purpose for which you may be leasing these
20 goods, except as otherwise provided in the contract,” and in any other contract the
21 language is sufficient if it states, for example, that “There are no warranties which
22 extend beyond the description on the face hereof.” Language that satisfies the

1 requirements of this subsection for a consumer lease also satisfies its requirements
2 for any other contract.

3 (3) Notwithstanding subsection (2):

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

8 (b) when the lessee before entering into the contract has examined the
9 goods or the sample or model as fully as ~~he~~ desired or has refused to examine the
10 goods after a demand by the lessor there is no implied warranty with regard to
11 defects which an examination ought in the circumstances to have revealed to ~~him~~ the
12 lessee; and

13 (c) an implied warranty can also be excluded or modified by course of
14 dealing or course of performance or usage of trade.

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

18 **Preliminary Comments**

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

21 **SECTION 2A-219. RISK OF LOSS.**

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

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

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

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

11 (ii) if it does require delivery at a particular destination and the goods
12 are there ~~duly~~ tendered while in the possession of the carrier, the risk of loss passes
13 to the lessee when the goods are there ~~duly~~ so tendered as to enable the lessee to
14 take delivery.

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

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

1 **Preliminary Comments**

2 The changes conform to amended Article 2.

3 **SECTION 2A-220. EFFECT OF DEFAULT ON RISK OF LOSS.**

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

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

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

12 (2) Whether or not risk of loss is to pass to the lessee, if the lessee as to
13 conforming goods already identified to a lease contract repudiates or is otherwise in
14 default under the lease contract, the lessor, or, in the case of a finance lease, the
15 supplier, to the extent of any deficiency in ~~his [or her]~~ its effective insurance
16 coverage may treat the risk of loss as resting on the lessee for a commercially
17 reasonable time.

18 **SECTION 2A-221. CASUALTY TO IDENTIFIED GOODS.** If a lease
19 contract requires goods identified when the lease contract is made, and the goods
20 suffer casualty without fault of the lessee, the lessor or the supplier before delivery,

1 or the goods suffer casualty before risk of loss passes to the lessee pursuant to the
2 lease agreement or Section 2A-219, then:

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

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

10 **Preliminary Comments**

11 The change in paragraph (b) conforms to amended Article 2.

12 **SECTION 2A-222. LEGAL RECOGNITION OF ELECTRONIC** 13 **CONTRACTS, RECORDS AND SIGNATURES.**

14 (1) A record or signature may not be denied legal effect or enforceability
15 solely because it is in electronic form.

16 (2) A contract may not be denied legal effect or enforceability solely
17 because an electronic record was used in its formation.

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

21 (4) A contract formed by the interaction of an individual and an electronic
22 agent under Section 2A-204(4)(b) does not include terms provided by the individual

1 if the individual had reason to know that the agent could not react to the terms as
2 provided.

3 **Preliminary Comments**

4 This section conforms to amended Article 2.

5 **SECTION 2A-223. ATTRIBUTION.** An electronic record or electronic
6 signature is attributed to a person if the record was created by or the signature was
7 the act of the person or the person's electronic agent or the person is otherwise
8 bound by the act under the law.

9 **Preliminary Comments**

10 This section conforms to amended Article 2.

11 **SECTION 2A-224. ELECTRONIC COMMUNICATION.**

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

14 (2) Receipt of an electronic acknowledgment of an electronic
15 communication establishes that the communication was received but, in itself, does
16 not establish that the content sent corresponds to the content received.

17 **Preliminary Comments**

18 This section conforms to amended Article 2.

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PART 3
EFFECT OF LEASE CONTRACT

**SECTION 2A-303. ALIENABILITY OF PARTY’S INTEREST UNDER
LEASE CONTRACT OR OF LESSOR’S RESIDUAL INTEREST IN
GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS.**

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

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

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

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

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

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

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

21 (b) if paragraph (a) is not applicable and if a transfer is made that (i) is
22 prohibited under a lease agreement or (ii) materially impairs the prospect of

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

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

17 (3) A term in a lease agreement which (i) prohibits a transfer of a right to
18 damages for default with respect to the whole lease contract or of a right to payment
19 arising out of the transferor's due performance of the transferor's entire obligation,
20 or (ii) makes such a transfer an event of default, is not enforceable, and such a
21 transfer is not a transfer that materially impairs the prospect of obtaining return

1 performance by, materially changes the duty of, or materially increases the burden or
2 risk imposed on, the other party to the lease contract within subsection (d).

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

4 (a) if a transfer is made that is an event of default under a lease
5 agreement, the party to the lease contract not making the transfer, unless that party
6 waives the default or otherwise agrees, has the rights and remedies described in
7 Section 2A-501(b):

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

18 (6) (5) A transfer of “the lease” or of “all my rights under the lease”, or a
19 transfer in similar general terms, is a transfer of rights and, unless the language or
20 the circumstances, as in a transfer for security, indicate the contrary, the transfer is a
21 delegation of duties by the transferor to the transferee. Acceptance by the transferee

1 constitutes a promise by the transferee to perform those duties. The promise is
2 enforceable by either the transferor or the other party to the lease contract.

3 ~~(7)~~ (6) Unless otherwise agreed by the lessor and the lessee, a delegation of
4 performance does not relieve the transferor as against the other party of any duty to
5 perform or of any liability for default.

6 ~~(8)~~ (7) In a consumer lease, to prohibit the transfer of an interest of a party
7 under the lease contract or to make a transfer an event of default, the language must
8 be specific, by a ~~writing~~ record, and conspicuous.

9 **Preliminary Comments**

10 This changes to this section conform to revised Article 9.

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

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

27 **SECTION 2A-304. SUBSEQUENT LEASE OF GOODS BY LESSOR.**

28 (1) Subject to Section 2A-303, a subsequent lessee from a lessor of goods
29 under an existing lease contract obtains, to the extent of the leasehold interest

1 transferred, the leasehold interest in the goods that the lessor had or had power to
2 transfer, and except as provided in subsection (2) and Section 2A-527(4), takes
3 subject to the existing lease contract. A lessor with voidable title has power to
4 transfer a good leasehold interest to a good faith subsequent lessee for value, but
5 only to the extent set forth in the preceding sentence. If goods have been delivered
6 under a transaction of purchase, the lessor has that power even though:

- 7 (a) the lessor's transferor was deceived as to the identity of the lessor;
- 8 (b) the delivery was in exchange for a check which is later dishonored;
- 9 (c) it was agreed that the transaction was to be a "cash sale"; or
- 10 (d) the delivery was procured through ~~fraud punishable as larcenous~~
11 ~~under the criminal law~~ criminal fraud.

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

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

1 **Preliminary Comments**

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

3 **SECTION 2A-305. SALE OR SUBLEASE OF GOODS BY LESSEE.**

4 (1) Subject to the provisions of Section 2A-303, a buyer or sublessee from
5 the lessee of goods under an existing lease contract obtains, to the extent of the
6 interest transferred, the leasehold interest in the goods that the lessee had or had
7 power to transfer, and except as provided in subsection (2) and Section 2A-511(4),
8 takes subject to the existing lease contract. A lessee with a voidable leasehold
9 interest has power to transfer a good leasehold interest to a good faith buyer for
10 value or a good faith sublessee for value, but only to the extent set forth in the
11 preceding sentence. When goods have been delivered under a transaction of lease
12 the lessee has that power even though:

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

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

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

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

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

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

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

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

11 ~~(4) A lessee other than a lessee in the ordinary course of business takes the~~
12 ~~leasehold interest free of a security interest to the extent that it secures future~~
13 ~~advances made after the secured party acquires knowledge of the lease or more than~~
14 ~~45 days after the lease contract becomes enforceable, whichever first occurs, unless~~
15 ~~the future advances are made pursuant to a commitment entered into without~~
16 ~~knowledge of the lease and before the expiration of the 45-day period.~~

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

19 (2) Except as otherwise provided in subsection (3) and Sections 2A-306 and
20 2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor
21 holds a lien that attached to the goods before the lease contract became enforceable.

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

4 **Preliminary Comments**

5 This section conforms with revised Article 9.

6 *Legislative Note: Subsections (2)(b), (2)(c), (3), and (4) of former Section 2A-307*
7 *were placed in revised Article 9. Section 9-317 covers rights of third parties*
8 *against unperfected security interests. Section 9-321 covers lessees in ordinary*
9 *course of business. Section 9-323 covers rights of third parties as against future*
10 *advances made under perfected security interests. If a jurisdiction adopting this*
11 *Act has not adopted revised Article 9, the deleted subsections of former Section*
12 *2A-307 set out below should be inserted as follows:*

13 (2) *Except as otherwise provided in subsections (3) and (4) and Sections*
14 *2A-306 and 2A-308, a creditor of a lessor takes subject to the lease contract*
15 *unless:*

16 (i) *the creditor holds a lien that attached to the goods before the lease*
17 *contract became enforceable;*

18 (ii) *the creditor holds a security interest in the goods and the lessee did*
19 *not give value and receive delivery of the goods without knowledge of the security*
20 *interest; or*

21 (iii) *the creditor holds a security interest in the goods which was*
22 *perfected under Article 9 before the lease contract became enforceable.*

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

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

1 **SECTION 2A-309. LESSOR’S AND LESSEE’S RIGHTS WHEN**
2 **GOODS BECOME FIXTURES.**

3 (1) In this section:

4 (a) goods are “fixtures” when they become so related to particular real
5 estate that an interest in them arises under real ~~estate~~ property law;

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

10 (c) a lease is a “purchase money lease” unless the lessee has possession
11 or use of the goods or the right to possession or use of the goods before the lease
12 agreement is enforceable;

13 (d) a mortgage is a “construction mortgage” to the extent it secures an
14 obligation incurred for the construction of an improvement on land including the
15 acquisition cost of the land, if ~~the recorded writing~~ a recorded record of the
16 mortgage so indicates; and

17 (e) “encumbrance” includes real estate mortgages and other liens on real
18 estate and all other rights in real estate that are not ownership interests.

19 (2) Under this Article a lease may be of goods that are fixtures or may
20 continue in goods that become fixtures, but no lease exists under this Article of
21 ordinary building materials incorporated into an improvement on land.

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

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

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

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

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

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

1 (b) the conflicting interest is a lien on the real estate obtained by legal or
2 equitable proceedings after the lease contract is enforceable; or

3 (c) the encumbrancer or owner has consented in writing a record to the
4 lease or has disclaimed an interest in the goods as fixtures; or

5 (d) ~~the lessee has a right to remove the goods as against the~~
6 ~~encumbrancer or owner. If the lessee's right to remove terminates, the priority of~~
7 ~~the interest of the lessor continues for a reasonable time~~ the lessee has a right to
8 remove the goods as against the encumbrancer or owner, but if the lessee's right to
9 remove terminates, the priority of the interest of the lessor continues for a
10 reasonable time.

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

19 (7) ~~In cases not within the preceding subsections~~ In cases not covered by
20 subsections (3) through (6), priority between the interest of a lessor of fixtures,
21 including the lessor's residual interest, and the conflicting interest of an

1 The change from “real estate” to “real property” conforms to revised Article
2 9, as does the changed cross-reference in subsection (1)(b). The changes in
3 subsections (5) and (7) are for clarification.

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

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PART 4
PERFORMANCE OF LEASE CONTRACT:
REPUDIATED, SUBSTITUTED AND EXCUSED

SECTION 2A-401. INSECURITY: ADEQUATE ASSURANCE OF PERFORMANCE.

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

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

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

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

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

4 **SECTION 2A-402. ANTICIPATORY REPUDIATION.**

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

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

10 (b) make demand pursuant to Section 2A-401 and await assurance of
11 future performance adequate under the circumstances of the particular case; or

12 (c) resort to any right or remedy upon default under the lease contract or
13 this Article, even though the aggrieved party has notified the repudiating party that
14 the aggrieved party would await the repudiating party's performance and assurance
15 and has urged retraction. In addition, whether or not the aggrieved party is pursuing
16 one of the foregoing remedies, the aggrieved party may suspend performance or, if
17 the aggrieved party is the lessor, proceed in accordance with the provisions of this
18 Article on the lessor's right to identify goods to the lease contract notwithstanding
19 default or to salvage unfinished goods (Section 2A-524).

20 (2) Repudiation includes language that a reasonable party would interpret to
21 mean that the other party will not or cannot make a performance still due under the

1 contract or voluntary, affirmative conduct that would appear to a reasonable party
2 to make a future performance by the other party impossible.

3 **Preliminary Comments**

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

5 **SECTION 2A-405. EXCUSED PERFORMANCE.** Subject to Section
6 2A-404 on substituted performance, the following rules apply:

7 (a) Delay in ~~delivery or nondelivery~~ performance or nonperformance in
8 whole or in part by a lessor or a supplier who complies with paragraphs (b) and (c)
9 is not a default under the lease contract if performance as agreed has been made
10 impracticable by the occurrence of a contingency the nonoccurrence of which was a
11 basic assumption on which the lease contract was made or by compliance in good
12 faith with any applicable foreign or domestic governmental regulation or order,
13 whether or not the regulation or order later proves to be invalid.

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

21 (c) The lessor seasonably shall notify the lessee and in the case of a finance
22 lease the supplier seasonably shall notify the lessor and the lessee, if known, that

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PART 5
DEFAULT

A. IN GENERAL

SECTION 2A-504. LIQUIDATION OF DAMAGES.

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

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

~~(3) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (Section 2A-525 or 2A-526), the lessee is entitled to restitution of any amount by which the sum of his [or her] payments exceeds:~~

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

1 *Legislative Note: To maintain its relative position in this Act, Section 2A-507A*
2 *may have to be renumbered according to the convention used by a particular State.*
3 *For example, in some States it may be designated as 2A-507.1.*

4 B. DEFAULT BY LESSOR

5 **SECTION 2A-508. LESSEE'S REMEDIES.**

6 ~~(1) If a lessor fails to deliver the goods in conformity to the lease contract~~
7 ~~(Section 2A-509) or repudiates the lease contract (Section 2A-402), or a lessee~~
8 ~~rightfully rejects the goods (Section 2A-509) or justifiably revokes acceptance of the~~
9 ~~goods (Section 2A-517), then with respect to any goods involved, and with respect~~
10 ~~to all of the goods if under an installment lease contract the value of the whole lease~~
11 ~~contract is substantially impaired (Section 2A-510), the lessor is in default under the~~
12 ~~lease contract and the lessee may:~~

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

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

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

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

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

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

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

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

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

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

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

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

15 (e) if an acceptance of goods has not been justifiably revoked, recover
16 damages for default with regard to accepted goods under Section 2A-519(3) and
17 (4);

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

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

20 (h) obtain specific performance under Section 2A-507A;

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

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

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

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

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

9 (a) reject the whole;

10 (b) accept the whole; or

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

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

14 (3) Subject to Sections 2A-511, 2A-512, and 2A-517(6):

15 (a) after rejection any use by the lessee with respect to any commercial
16 unit is wrongful as against the lessor or supplier; and

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

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

3 (d) The lessor's or supplier's remedies with respect to goods wrongfully
4 rejected are governed by Section 2A-523.

5 **Preliminary Comments**

6 This section conforms with amended Article 2, except that its provisions are
7 contained in two sections in amended Article 2.

8 **SECTION 2A-510. INSTALLMENT LEASE CONTRACTS:**

9 **REJECTION AND DEFAULT.**

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

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

22 **Preliminary Comments**

1 The changes conform to amended Article 2.

2 **SECTION 2A-511. MERCHANT LESSEE'S DUTIES AS TO**
3 **~~RIGHTFULLY~~ REJECTED GOODS.**

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

13 (2) If a merchant lessee (subsection (1)) or any other lessee (Section
14 2A-512) disposes of goods following a rightful rejection, ~~he [or she]~~ the lessee is
15 entitled to reimbursement either from the lessor or the supplier or out of the
16 proceeds for reasonable expenses of caring for and disposing of the goods and, if the
17 expenses include no disposition commission, to such commission as is usual in the
18 trade, or if there is none, to a reasonable sum not exceeding 10 percent of the gross
19 proceeds.

1 ~~money allowance, the lessor or the supplier may have a further reasonable time to~~
2 ~~substitute a conforming tender if he [or she] seasonably notifies the lessee.~~

3 (1) Where the lessee rejects goods or a tender of delivery under Section
4 2A-509 or 2A-510 or except in a consumer contract justifiably revokes acceptance
5 under Section 2A-517(1)(b) and the agreed time for performance has not expired, a
6 lessor or the supplier that has performed in good faith, upon seasonable notice to the
7 lessee and at the lessor's or supplier's own expense, may cure the default by making
8 a conforming tender of delivery within the agreed time. The lessor or supplier shall
9 compensate the lessee for all of the lessee's reasonable expenses caused by the
10 lessor's or supplier's default and subsequent cure.

11 (2) Where the lessee rejects goods or a tender of delivery under Section
12 2A-509 or 2A-510 or except in a consumer lease justifiably revokes acceptance
13 under Section 2A-517(1)(b) and the agreed time for performance has expired, a
14 lessor or supplier that has performed in good faith may, upon seasonable notice to
15 the lessee and at the lessor's or supplier's own expense, cure the default if the cure
16 is appropriate and timely under the circumstances, by making a tender of conforming
17 goods. The lessor or supplier shall compensate the lessee for all of the lessee's
18 reasonable expenses caused by the lessor's or supplier's default and subsequent
19 cure.

20 **Preliminary Comments**

21 The changes conform to amended Article 2.

1 **SECTION 2A-514. WAIVER OF LESSEE’S OBJECTIONS.**

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

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

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

10 (1) The lessee’s failure to state in connection with rejection a particular
11 defect or in connection with revocation of acceptance a defect which justifies
12 revocation precludes the lessee from relying on the unstated defect to justify
13 rejection or revocation of acceptance if the defect is ascertainable by reasonable
14 inspection:

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

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

20 (2) A lessee’s failure to reserve rights when paying rent or other
21 consideration against documents precludes recovery of the payment for defects
22 apparent on the face of the documents.

1 **Preliminary Comments**

2 The changes conform to amended Article 2.

3 **SECTION 2A-515. ACCEPTANCE OF GOODS.**

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

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

9 ~~(b) the lessee fails to make an effective rejection of the goods (Section~~
10 ~~2A-509(2)).~~

11 (1) Acceptance of goods occurs when the lessee:

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

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

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

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

1 **Preliminary Comments**

2 The changes conform to amended Article 2.

3 **SECTION 2A-516. EFFECT OF ACCEPTANCE OF GOODS; NOTICE**
4 **OF DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER**
5 **ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON**
6 **ANSWERABLE OVER.**

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

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

16 (3) If a tender has been accepted:

17 (a) within a reasonable time after the lessee discovers or should have
18 discovered any default, the lessee shall notify the lessor and the supplier, if any, ~~or~~
19 ~~be barred from any remedy against the party not notified ;~~ however, failure to give
20 timely notice bars the lessee from a remedy only to the extent that the lessor or
21 supplier is prejudiced by the failure;

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

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

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

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

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

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

3 **Preliminary Comments**

4 The changes conform to amended Article 2.

5 **SECTION 2A-517. REVOCATION OF ACCEPTANCE OF GOODS.**

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

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

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

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

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

20 (4) Revocation of acceptance must occur within a reasonable time after the
21 lessee discovers or should have discovered the ground for it and before any

1 substantial change in condition of the goods which is not caused by the
2 nonconformity. Revocation is not effective until the lessee notifies the lessor.

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

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

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

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

14 **Preliminary Comments**

15 The addition of subsection (6) conforms to amended Article 2.

16 **SECTION 2A-521. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE**

17 ~~**OR REPLEVIN RESERVED.**~~

18 **Preliminary Comments**

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

1 **SECTION 2A-522. LESSEE’S RIGHT TO GOODS ON LESSOR’S**
2 **INSOLVENCY.**

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

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

11 (b) in all cases, the lessor becomes insolvent within 10 days after receipt
12 of the first installment on their rent and security.

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

15 **Preliminary Comments**

16 The changes conform to amended Article 2.

17 C. DEFAULT BY LESSEE

18 **SECTION 2A-523. LESSOR’S REMEDIES.**

19 ~~(1) If a lessee wrongfully rejects or revokes acceptance of goods or fails to~~
20 ~~make a payment when due or repudiates with respect to a part or the whole, then,~~
21 ~~with respect to any goods involved, and with respect to all of the goods if under an~~

1 ~~installment lease contract the value of the whole lease contract is substantially~~
2 ~~impaired (Section 2A-510), the lessee is in default under the lease contract and the~~
3 ~~lessor may:~~

- 4 ~~(a) cancel the lease contract (Section 2A-505(1));~~
- 5 ~~(b) proceed respecting goods not identified to the lease contract (Section~~
6 ~~2A-524);~~
- 7 ~~(c) withhold delivery of the goods and take possession of goods~~
8 ~~previously delivered (Section 2A-525);~~
- 9 ~~(d) stop delivery of the goods by any bailee (Section 2A-526);~~
- 10 ~~(e) dispose of the goods and recover damages (Section 2A-527), or~~
11 ~~retain the goods and recover damages (Section 2A-528), or in a proper case recover~~
12 ~~rent (Section 2A-529);~~
- 13 ~~(f) exercise any other rights or pursue any other remedies provided in the~~
14 ~~lease contract.~~

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

- 19 (a) withhold delivery of the goods and take possession of goods
20 previously delivered under Section 2A-525;
- 21 (b) stop delivery of the goods by any carrier or bailee under Section
22 2A-526;

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

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

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

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

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

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

10 (i) exercise any other rights or pursue any other remedies provided in the
11 lease agreement.

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

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

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

16 or

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

19 ~~(2)~~ (3) If a lessor does not fully exercise a right or obtain a remedy to which
20 the lessor is entitled under subsection (1), the lessor may recover the loss resulting
21 in the ordinary course of events from the lessee's default as determined in any

1 reasonable manner, together with incidental or consequential damages allowed
2 under Section 2A-530, less expenses saved in consequence of the lessee's default.

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

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

10 (b) if the default does not substantially impair the value of the lease
11 contract to the lessor, the lessor may recover as provided in subsection (2).

12 **Preliminary Comments**

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

16 **SECTION 2A-526. LESSOR'S STOPPAGE OF DELIVERY IN** 17 **TRANSIT OR OTHERWISE.**

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

1 (2) Except as otherwise provided with respect to damages liquidated in the
2 lease agreement (Section 2A-504) or otherwise determined pursuant to agreement
3 of the parties (Section ~~1-102(3)~~ 1-302 and 2A-503), if the disposition is by lease
4 agreement substantially similar to the original lease agreement and the new lease
5 agreement is made in good faith and in a commercially reasonable manner, the lessor
6 may recover from the lessee as damages (i) accrued and unpaid rent as of the date of
7 the commencement of the term of the new lease agreement, (ii) the present value, as
8 of the same date, of the total rent for the then remaining lease term of the original
9 lease agreement minus the present value, as of the same date, of the rent under the
10 new lease agreement applicable to that period of the new lease term which is
11 comparable to the then remaining term of the original lease agreement, and (iii) any
12 incidental or consequential damages allowed under Section 2A-530, less expenses
13 saved in consequence of the lessee's default.

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

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

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

5 *Legislative Note: The cross-reference in subsection (2) should not be changed if*
6 *the jurisdiction has not adopted revised Article 1.*

7 **SECTION 2A-528. LESSOR'S DAMAGES FOR NON-ACCEPTANCE,**
8 **FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT.**

9 (1) Except as otherwise provided with respect to damages liquidated in the
10 lease agreement (Section 2A-504) or otherwise determined pursuant to agreement
11 of the parties (Sections 1-302 and 2A-503), if a lessor elects to retain the goods or a
12 lessor elects to dispose of the goods and the disposition is by lease agreement that
13 for any reason does not qualify for treatment under Section 2A-527(2), or is by sale
14 or otherwise, the lessor may recover from the lessee as damages for a default of the
15 type described in Section 2A-523(1) or 2A-523(4)(a), or, if agreed, for other default
16 of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has
17 never taken possession of the goods, or, if the lessee has taken possession of the
18 goods, as of the date the lessor repossesses the goods or an earlier date on which
19 the lessee makes a tender of the goods to the lessor, (ii) the present value as of the
20 date determined under clause (i) of the total rent for the then remaining lease term of
21 the original lease agreement minus the present value as of the same date of the
22 market rent at the place where the goods are located computed for the same lease

1 term, and (iii) any incidental or consequential damages allowed under Section
2 2A-530, less expenses saved in consequence of the lessee's default.

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

9 **Preliminary Comments**

10 The changes conform to amended Article 2.

11 **SECTION 2A-529. LESSOR'S ACTION FOR THE RENT.**

12 (1) After default by the lessee under the lease contract of the type described
13 in Section 2A-523(1) or 2A-523(4)(a) or, if agreed, after other default by the lessee,
14 if the lessor complies with subsection (2), the lessor may recover from the lessee as
15 damages:

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

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

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

11 (3) The lessor may dispose of the goods at any time before collection of the
12 judgment for damages obtained pursuant to subsection (1). If the disposition is
13 before the end of the remaining lease term of the lease agreement, the lessor's
14 recovery against the lessee for damages is governed by Section 2A-527 or Section
15 2A-528, and the lessor will cause an appropriate credit to be provided against a
16 judgment for damages to the extent that the amount of the judgment exceeds the
17 recovery available pursuant to Section 2A-527 or 2A-528.

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

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

1 the lessee, a lessor who is held not entitled to rent under this section must
2 nevertheless be awarded damages for non-acceptance under Section 2A-527 or
3 Section 2A-528.

4 **Preliminary Comments**

5 The changes conform to amended Article 2.

6 **SECTION 2A-530. LESSOR'S INCIDENTAL AND CONSEQUENTIAL**
7 **DAMAGES.**

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

12 (2) Consequential damages resulting from a lessee's default include any loss
13 resulting from general or particular requirements and needs of which the lessee at
14 the time of contracting had reason to know and which could not reasonably be
15 prevented by disposition under Section 2A-527 or otherwise.

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

18 **Preliminary Comments**

19 The changes conform to amended Article 2.

1 **SECTION 2A-531. STANDING TO SUE THIRD PARTIES FOR**
2 **INJURY TO GOODS.**

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

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

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

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

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

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

1 **PART 6**

2 **TRANSITION PROVISIONS**

3 **SECTION 2A-601. EFFECTIVE DATE.** This [Act] shall become effective
4 on _____, 20__.

5 **SECTION 2A-602. AMENDMENT OF EXISTING ARTICLE 2A.** This
6 [Act] amends [insert citation to existing Article 2A].

7 **SECTION 2A-603. APPLICABILITY.** This [Act] applies to a transaction
8 within its scope that is entered into on or after the effective date of this [Act]. This
9 [Act] does not apply to a transaction that is entered into before the effective date of
10 this [Act] even if the transaction would be subject to this [Act] if it had been entered
11 into after the effective date of this [Act]. This [Act] does not apply to a cause of
12 action that has accrued before the effective date of this [Act].

13 **SECTION 2A-604. SAVINGS CLAUSE.** A transaction entered into before
14 the effective date of this [Act] and the rights, obligations, and interests flowing from
15 that transaction are governed by any statute or other law amended or repealed by
16 this [Act] as if amendment or repeal had not occurred and may be terminated,
17 completed, consummated, or enforced under that statute or other law.