

## **Part 1**

### **Short Title, Definitions, Options**

#### **70A-2a-101 Short title.**

This chapter is known as the Uniform Commercial Code - Leases.

Enacted by Chapter 197, 1990 General Session

#### **70A-2a-102 Scope.**

This chapter applies to any transaction, regardless of form, that creates a lease.

Enacted by Chapter 197, 1990 General Session

#### **70A-2a-103 Definitions -- Index of definitions.**

(1) In this chapter, unless the context otherwise requires:

- (a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale, but does not include a transfer in bulk, or as security for, or in total or partial satisfaction of a money debt.
- (b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.
- (c) "Commercial unit" means a unit of goods which by commercial usage is a single whole for purposes of lease, and the division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, such as a machine, or a set of articles, such as a suite of furniture or a line of machinery, or a quantity, such as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.
- (d) "Conforming goods or performance under a lease contract" means goods or performance that are in accordance with the obligations under the lease contract.
- (e) "Consumer lease" means a lease that a lessor, regularly engaged in the business of leasing or selling, makes to a lessee, who is an individual and who takes under the lease primarily for a personal, family, or household purpose.
- (f) "Fault" means wrongful act, omission, breach, or default.
- (g) "Finance lease" means a lease in which:
  - (i) the lessor does not select, manufacture, or supply the goods;
  - (ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
  - (iii) one of the following occurs:
    - (A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
    - (B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
    - (C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations, or modifications of remedies, or liquidated damages, including those of a

third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:

- (I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person;
- (II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and
- (III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

- (h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures. The term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.
- (i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause stating "each delivery is a separate lease" or its equivalent.
- (j) "Lease" means a transfer of the right to possession and use of goods for a term, in return for consideration. Unless the context clearly indicates otherwise, the term includes a sublease. But a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease.
- (k) "Lease agreement" with respect to the lease, means the bargain of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.
- (l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.
- (m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.
- (n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.
- (o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights, security interest, or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property, or on secured or unsecured credit, and includes acquiring goods or documents of title under a preexisting lease contract. "Leasing" does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- (p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.
- (q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

- (r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.
  - (s) "Lot" means a parcel or single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.
  - (t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.
  - (u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.
  - (v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.
  - (w) "Sublease" means a lease of goods, the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.
  - (x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.
  - (y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.
  - (z) "Termination" occurs when either party, pursuant to a power created by agreement or law, puts an end to the lease contract otherwise than for default.
- (2) Other definitions applying to this chapter and the sections in which they appear are:
- (a) "Accessions," Section 70A-2a-310.
  - (b) "Construction mortgage," Section 70A-2a-309.
  - (c) "Encumbrance," Section 70A-2a-309.
  - (d) "Fixtures," Section 70A-2a-309.
  - (e) "Fixture filing," Section 70A-2a-309.
  - (f) "Purchase money lease," Section 70A-2a-309.
- (3) The following definitions in other chapters apply to this chapter:
- (a) "Account," Subsection 70A-9a-102(2).
  - (b) "Between merchants," Section 70A-2-104.
  - (c) "Buyer," Section 70A-2-103.
  - (d) "Chattel paper," Subsection 70A-9a-102(11).
  - (e) "Consumer goods," Subsection 70A-9a-102(23).
  - (f) "Document," Subsection 70A-9a-102(30).
  - (g) "Entrusting," Section 70A-2-403.
  - (h) "General intangible," Subsection 70A-9a-102(42).
  - (i) "Good faith," Section 70A-2-103.
  - (j) "Instrument," Subsection 70A-9a-102(47).
  - (k) "Merchant," Section 70A-2-104.
  - (l) "Mortgage," Subsection 70A-9a-102(55).
  - (m) "Pursuant to commitment," Subsection 70A-9a-102(69).
  - (n) "Receipt," Section 70A-2-103.
  - (o) "Sale," Section 70A-2-106.
  - (p) "Sale on approval," Section 70A-2-326.
  - (q) "Sale or return," Section 70A-2-326.
  - (r) "Seller," Section 70A-2-103.

- (4) In addition, Title 70A, Chapter 1a, Uniform Commercial Code - General Provisions, contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Amended by Chapter 225, 2013 General Session

**70A-2a-104 Leases subject to other law.**

- (1) A lease, although subject to this chapter, is also subject to any applicable:
- (a) certificate of title statute of this state;
  - (b) certificate of title statute of another jurisdiction as provided in Section 70A-2a-105;
  - (c) consumer protection statute of this state; or
  - (d) final consumer protection decision of a court of this state as of July 1, 1993.
- (2) In case of conflict between this chapter (other than Section 70A-2a-105 and Subsections 70A-2a-304(3) and 70A-2a-305(3)) and a statute or decision referred to in Subsection (1), the statute or decision controls.
- (3) Failure to comply with any applicable law has only the effect specified in that law.

Amended by Chapter 237, 1993 General Session

**70A-2a-105 Territorial application to goods covered by certificate of title.**

Subject to the provisions of Subsections 70A-2a-304(3) and 70A-2a-305(3), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law, including the conflict of laws rules, of the jurisdiction issuing the certificate until the earlier of surrender of the certificate or four months after the goods are removed from that jurisdiction, and thereafter until a new certificate of title is issued by another jurisdiction.

Enacted by Chapter 197, 1990 General Session

**70A-2a-106 Limitation on power of parties to consumer lease to choose applicable law and judicial forum.**

- (1) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used or if the goods are to be used in more than one jurisdiction none of which is the residence of the lessee in which the lease is executed by the lessee, the choice is not enforceable.
- (2) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

Enacted by Chapter 197, 1990 General Session

**70A-2a-107 Waiver or renunciation of claim or right after default.**

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

Enacted by Chapter 197, 1990 General Session

**70A-2a-108 Unconscionability.**

- (1) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may limit the application of an unconscionable clause to avoid any unconscionable result.
- (2) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct, or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.
- (3) Before making a finding of unconscionability under Subsection (1) or (2), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.
- (4) In an action in which the lessee claims unconscionability with respect to a consumer lease:
  - (a) If the court finds unconscionability under Subsection (1) or (2), the court shall award reasonable attorney's fees to the lessee.
  - (b) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.
  - (c) In determining attorney's fees, the amount of the recovery on behalf of the claimant under Subsections (1) and (2) is not controlling.

Enacted by Chapter 197, 1990 General Session

**70A-2a-109 Option to accelerate at will.**

- (1) A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import must be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.
- (2) With respect to a consumer lease, the burden of establishing good faith under Subsection (1) is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

Enacted by Chapter 197, 1990 General Session