

## **Part 3**

### **Contract, Liens, Rights**

#### **70A-2a-301 Enforceability of lease contract.**

Except as otherwise provided in this chapter, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

Enacted by Chapter 197, 1990 General Session

#### **70A-2a-302 Title to and possession of goods.**

Except as otherwise provided in this chapter, each provision of this chapter applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

Enacted by Chapter 197, 1990 General Session

#### **70A-2a-303 Transfer of party's interest under lease contract or of lessor's residual interest in goods -- Transfer as event of default -- Creation or enforcement of security interest -- Transfer of right to damages for default.**

- (1) As used in this section, "creation of a security interest" includes the sale of a lease contract subject to Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions, by reason of Subsection 70A-9a-109(1)(c).
- (2) Except as provided in Subsection (3) and Section 70A-9a-407, a provision in a lease agreement that 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 that makes such a transfer an event of default, gives rise to the rights and remedies provided in Subsection (4), 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 that prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of Subsection (4).
- (4) Subject to Subsection (3) and Section 70A-9a-407:
  - (a) if a transfer is made that is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in Section 70A-2a-501; and
  - (b) if Subsection (4)(a) is not applicable and if a transfer is made that is prohibited under a lease agreement, or materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, the transferor is liable

to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer, and a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

- (5) A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar general terms, is a transfer of rights, and unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.
- (6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or any liability for default.
- (7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract, or to make a transfer an event of default, the language must be specific, by writing, and conspicuous.

Amended by Chapter 252, 2000 General Session

**70A-2a-304 Subsequent lease of goods by lessor.**

- (1) Subject to Section 70A-2a-303, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in Subsection (2) and Subsection 70A-2a-527(4), takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:
  - (a) the lessor's transferor was deceived as to the identity of the lessor;
  - (b) the delivery was in exchange for a check which is later dishonored;
  - (c) it was agreed that the transaction was to be a "cash sale;" or
  - (d) the delivery was procured through fraud punishable as larcenous under the criminal law.
- (2) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against the lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.
- (3) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Amended by Chapter 237, 1993 General Session

**70A-2a-305 Sale or sublease of goods by lessee.**

- (1) Subject to the provisions of Section 70A-2a-303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in Subsection (2) and Subsection 70A-2a-511(4), takes subject to the existing lease contract. A

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

- (a) the lessor was deceived as to the identity of the lessee;
  - (b) the delivery was in exchange for a check which is later dishonored; or
  - (c) the delivery was procured through fraud punishable as larcenous under the criminal law.
- (2) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.
- (3) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Enacted by Chapter 197, 1990 General Session

**70A-2a-306 Priority of certain liens arising by operation of law.**

If a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this chapter unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

Enacted by Chapter 197, 1990 General Session

**70A-2a-307 Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.**

- (1) Except as otherwise provided in Section 70A-2a-306, a creditor of a lessee takes subject to the lease contract.
- (2) Except as otherwise provided in Subsection (3) and in Sections 70A-2a-306 and 70A-2a-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.
- (3) Except as otherwise provided in Sections 70A-9a-317, 70A-9a-321, and 70A-9a-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

Amended by Chapter 252, 2000 General Session

**70A-2a-308 Special rights of creditors.**

- (1) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent or voids the lease contract under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent and does not void the lease contract.

- (2) Nothing in this chapter impairs the rights of creditors of a lessor if the lease contract is made under circumstances which under any statute or rule of law apart from the chapter would constitute the transaction a fraudulent transfer or voidable preference.
- (3) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

Enacted by Chapter 197, 1990 General Session

**70A-2a-309 Lessor's and lessee's rights when goods become fixtures.**

- (1) In this section:
  - (a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;
  - (b) a "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be filed, recorded, or registered, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of Subsections 70A-9a-502(1) and (2);
  - (c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;
  - (d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and
  - (e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.
- (2) Under this chapter, a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.
- (3) This chapter does not prevent creation of a lease of fixtures pursuant to real estate law.
- (4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:
  - (a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, a fixture filing covering the fixtures is filed or recorded before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or
  - (b) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.
- (5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:
  - (a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable;
  - (b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

- (c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or
  - (d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.
- (6) Notwithstanding Subsection (4)(a), but otherwise subject to Subsections (4) and (5), the interest of a lessor of fixtures is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.
- (7) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.
- (8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrances of the real estate, the lessor or the lessee may:
- (a) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this chapter; or
  - (b) if necessary to enforce other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrances of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove the goods until the party seeking removal gives adequate security for the performance of this obligation.
- (9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions.

Amended by Chapter 252, 2000 General Session

**70A-2a-310 Lessor's and lessee's rights when goods become accessions.**

- (1) Goods are "accessions" when they are installed in or affixed to other goods.
- (2) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in Subsection (4).
- (3) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in Subsection (4), but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.
- (4) The interest of a lessor or a lessee under a lease contract described in Subsection (2) or (3) is subordinate to the interest of:

- (a) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or
  - (b) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.
- (5) When, under Subsections (2) or (3) and (4), a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may:
- (a) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this chapter; or
  - (b) if necessary to enforce his other rights and remedies under this chapter, remove the goods from the whole, free and clear of all interests in the whole, but he must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

Enacted by Chapter 197, 1990 General Session

**70A-2a-311 Priority subject to subordination.**

Nothing in this chapter prevents subordination by agreement by any person entitled to priority.

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