

70A-2a-516 Effect of acceptance of goods -- Notice of default -- Burden of establishing default after acceptance -- Notice of claim or litigation to person answerable over.

- (1) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.
- (2) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease other than a consumer lease in which the supplier assisted in the preparation of the lease contract or participated in negotiating the terms of the lease contract with the lessor, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this chapter or the lease agreement for nonconformity.
- (3) If a tender has been accepted:
 - (a) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor, or be barred from any remedy against the lessor, and, in addition, in the case of a finance lease, the lessee shall notify the supplier or be barred from any remedy against the supplier;
 - (b) within a reasonable time after the lessee receives notice of litigation for infringement or the like, as provided in Section 70A-2a-211, the lessee shall notify the lessor or be barred from any remedy for liability established by the litigation; and
 - (c) the burden is on the lessee to establish any default.
- (4) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over, the following apply:
 - (a) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the lessor or the supplier may come in and defend and that if the lessor or the supplier does not do so, he will be bound in any action against him by the lessee by any determination of fact common to the two litigations, unless the lessor or the supplier, after seasonable receipt of the notice, does come in and so defend.
 - (b) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation, including settlement if the claim is one for infringement or the like as provided in Section 70A-2a-211, or else be barred from any remedy. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then, unless the lessee after seasonable receipt of the demand does turn over control, the lessee is so barred.
- (5) Subsections (3) and (4) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like as provided in Section 70A-2a-211.

Amended by Chapter 237, 1993 General Session