

SENATE BILL No. 806

March 17, 1992, Introduced by Senator N. SMITH and referred to the Committee on Corporations and Economic Development.

A bill to amend the title and sections 1105, 1201, 1207, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3301, 3302, 3303, 3304, 3305, 3306, 3307, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3410, 3411, 3412, 3413, 3414, 3415, 3416, 3417, 3418, 3419, 3501, 3502, 3503, 3504, 3505, 3601, 3602, 3603, 3604, 3605, 4102, 4103, 4104, 4105, 4106, 4107, 4108, 4109, 4201, 4202, 4203, 4204, 4205, 4207, 4208, 4209, 4210, 4211, 4212, 4213, 4214, 4301, 4302, 4303, 4401, 4402, 4403, 4406, 4407, and 9113 of Act No. 174 of the Public Acts of 1962, entitled as amended

"Uniform commercial code,"

section 1201 as amended by Act No. 16 of the Public Acts of 1987, being sections 440.1105, 440.1201, 440.1207, 440.3101, 440.3102, 440.3103, 440.3104, 440.3105, 440.3106, 440.3107, 440.3108,

440.3109, 440.3110, 440.3111, 440.3112, 440.3113, 440.3114,
 440.3115, 440.3116, 440.3117, 440.3118, 440.3119, 440.3201,
 440.3202, 440.3203, 440.3204, 440.3205, 440.3206, 440.3207,
 440.3301, 440.3302, 440.3303, 440.3304, 440.3305, 440.3306,
 440.3307, 440.3401, 440.3402, 440.3403, 440.3404, 440.3405,
 440.3406, 440.3407, 440.3408, 440.3409, 440.3410, 440.3411,
 440.3412, 440.3413, 440.3414, 440.3415, 440.3416, 440.3417,
 440.3418, 440.3419, 440.3501, 440.3502, 440.3503, 440.3504,
 440.3505, 440.3601, 440.3602, 440.3603, 440.3604, 440.3605,
 440.4102, 440.4103, 440.4104, 440.4105, 440.4106, 440.4107,
 440.4108, 440.4109, 440.4201, 440.4202, 440.4203, 440.4204,
 440.4205, 440.4207, 440.4208, 440.4209, 440.4210, 440.4211,
 440.4212, 440.4213, 440.4214, 440.4301, 440.4302, 440.4303,
 440.4401, 440.4402, 440.4403, 440.4406, 440.4407, and 440.9113 of
 the Michigan Compiled Laws; to add article 2A, sections 3308,
 3309, 3310, 3311, 3312, 3420, 4110, 4111, 4215, and 4216, and
 article 4A; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1105, 1201, 1207, 3101,
 2 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112,
 3 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3201, 3202, 3203, 3204,
 4 3205, 3206, 3207, 3301, 3302, 3303, 3304, 3305, 3306, 3307, 3401,
 5 3402, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3410, 3411, 3412,
 6 3413, 3414, 3415, 3416, 3417, 3418, 3419, 3501, 3502, 3503, 3504,
 7 3505, 3601, 3602, 3603, 3604, 3605, 4102, 4103, 4104, 4105, 4106,
 8 4107, 4108, 4109, 4201, 4202, 4203, 4204, 4205, 4207, 4208, 4209,
 9 4210, 4211, 4212, 4213, 4214, 4301, 4302, 4303, 4401, 4402, 4403,

1 4406, 4407, and 9113 of Act No. 174 of the Public Acts of 1962,
2 section 1201 as amended by Act No. 16 of the Public Acts of 1987,
3 being sections 440.1105, 440.1201, 440.1207, 440.3101, 440.3102,
4 440.3103, 440.3104, 440.3105, 440.3106, 440.3107, 440.3108,
5 440.3109, 440.3110, 440.3111, 440.3112, 440.3113, 440.3114,
6 440.3115, 440.3116, 440.3117, 440.3118, 440.3119, 440.3201,
7 440.3202, 440.3203, 440.3204, 440.3205, 440.3206, 440.3207,
8 440.3301, 440.3302, 440.3303, 440.3304, 440.3305, 440.3306,
9 440.3307, 440.3401, 440.3402, 440.3403, 440.3404, 440.3405,
10 440.3406, 440.3407, 440.3408, 440.3409, 440.3410, 440.3411,
11 440.3412, 440.3413, 440.3414, 440.3415, 440.3416, 440.3417,
12 440.3418, 440.3419, 440.3501, 440.3502, 440.3503, 440.3504,
13 440.3505, 440.3601, 440.3602, 440.3603, 440.3604, 440.3605,
14 440.4102, 440.4103, 440.4104, 440.4105, 440.4106, 440.4107,
15 440.4108, 440.4109, 440.4201, 440.4202, 440.4203, 440.4204,
16 440.4205, 440.4207, 440.4208, 440.4209, 440.4210, 440.4211,
17 440.4212, 440.4213, 440.4214, 440.4301, 440.4302, 440.4303,
18 440.4401, 440.4402, 440.4403, 440.4406, 440.4407, and 440.9113 of
19 the Michigan Compiled Laws, are amended and article 2A,
20 sections 3308, 3309, 3310, 3311, 3312, 3420, 4110, 4111, 4215,
21 and 4216, and article 4A are added to read as follows:

22 TITLE

23 An act to enact the uniform commercial code, relating to
24 certain commercial transactions in or regarding personal property
25 and contracts and other documents concerning them, including
26 sales, commercial paper, bank deposits and collections, letters
27 of credit, bulk transfers, warehouse receipts, bills of lading,

1 other documents of title, investment securities, LEASES, and
 2 secured transactions, including certain sales of accounts, chat-
 3 tel paper and contract rights; to provide for public notice to
 4 third parties in certain circumstances; to regulate procedure,
 5 evidence and damages in certain court actions involving such
 6 transactions, contracts or documents; to make uniform the law
 7 with respect thereto; to make an appropriation; to provide penal-
 8 ties; and to repeal certain acts and parts of acts.

9 Sec. 1105. (1) Except as provided hereafter in this sec-
 10 tion, when a transaction bears a reasonable relation to this
 11 state and also to another state or nation the parties may agree
 12 that the law either of this state or of such other state or
 13 nation shall govern their rights and duties. Failing such agree-
 14 ment this act applies to transactions bearing an appropriate
 15 relation to this state.

16 (2) Where 1 of the following provisions of this act speci-
 17 fies the applicable law, that provision governs and a contrary
 18 agreement is effective only to the extent permitted by the law
 19 (including the conflict of laws rules) so specified:

20 Rights of creditors against sold goods.	Section 2402.
21 Applicability of the article on bank deposits and	
22 collections.	Section 4102.
23 GOVERNING LAW IN THE ARTICLE ON FUNDS TRANSFERS.	SECTION 4A502.
24 Bulk transfers subject to the article on bulk	
25 transfers.	Section 6102.

1 Applicability of the article on investment

2 securities.

Section 8106.

3 APPLICABILITY OF THE ARTICLE ON LEASES. SECTIONS 2A105 AND 2A106.

4 Perfection provisions of the article on secured

5 transactions.

Section 9103.

6 Sec. 1201. Subject to additional definitions contained in
7 the subsequent articles of this act which are applicable to spe-
8 cific articles or parts of this act, and unless the context oth-
9 erwise requires, in this act:

10 (1) "Action" in the sense of a judicial proceeding includes
11 recoupment, counterclaim, setoff, suit in equity, and any other
12 proceedings in which rights are determined.

13 (2) "Aggrieved party" means a party entitled to resort to a
14 remedy.

15 (3) "Agreement" means the bargain of the parties in fact as
16 found in their language or by implication from other circum-
17 stances including course of dealing or usage of trade or course
18 of performance as provided in this act (sections 1205 and 2208).
19 Whether an agreement has legal consequences is determined by the
20 provisions of this act, if applicable; otherwise by the law of
21 contracts (section 1103). (Compare "Contract".)

22 (4) "Bank" means any person engaged in the business of
23 banking.

24 (5) "Bearer" means the person in possession of an instru-
25 ment, document of title, or certificated security payable to
26 bearer or indorsed in blank.

1 (6) "Bill of lading" means a document evidencing the receipt
2 of goods for shipment issued by a person engaged in the business
3 of transporting or forwarding goods, and includes an airbill.

4 "Airbill" means a document serving for air transportation as a
5 bill of lading does for marine or rail transportation, and
6 includes an air consignment note or air waybill.

7 (7) "Branch" includes a separately incorporated foreign
8 branch of a bank.

9 (8) "Burden of establishing a fact" means the burden of per-
10 suading the triers of fact that the existence of the fact is more
11 probable than its nonexistence.

12 (9) "Buyer in ordinary course of business" means a person
13 who in good faith and without knowledge that the sale to him or
14 her is in violation of the ownership rights or security interest
15 of a third party in the goods buys in ordinary course from a
16 person in the business of selling goods of that kind but does not
17 include a pawnbroker. All persons who sell minerals or the like,
18 including oil and gas, at wellhead or minehead shall be deemed to
19 be persons in the business of selling goods of that kind.

20 "Buying" may be for cash or by exchange of other property or on
21 secured or unsecured credit and includes receiving goods or docu-
22 ments of title under a preexisting contract for sale but does not
23 include a transfer in bulk or as security for or in total or par-
24 tial satisfaction of a money debt.

25 (10) "Conspicuous": A term or clause is conspicuous when it
26 is so written that a reasonable person against whom it is to
27 operate ought to have noticed it. A printed heading in capitals

1 (as: non-negotiable bill of lading) is conspicuous. Language in
2 the body of a form is "conspicuous" if it is in larger or other
3 contrasting type or color. But in a telegram any stated term is
4 "conspicuous". Whether a term or clause is "conspicuous" or not
5 is for decision by the court.

6 (11) "Contract" means the total legal obligation which
7 results from the parties' agreement as affected by this act and
8 any other applicable rules of law. (Compare "agreement".)

9 (12) "Creditor" includes a general creditor, a secured cred-
10 itor, a lien creditor and any representative of creditors,
11 including an assignee for the benefit of creditors, a trustee in
12 bankruptcy, a receiver in equity, and an executor or administra-
13 tor of an insolvent debtor's or assignor's estate.

14 (13) "Defendant" includes a person in the position of
15 defendant in a cross action or counterclaim.

16 (14) "Delivery" with respect to instruments, documents of
17 title, chattel paper, or certificated securities means voluntary
18 transfer of possession.

19 (15) "Document of title" includes bill of lading, dock war-
20 rant, dock receipt, warehouse receipt, or order for the delivery
21 of goods, and also any other document which in the regular course
22 of business or financing is treated as adequately evidencing that
23 the person in possession of it is entitled to receive, hold, and
24 dispose of the document and the goods it covers. To be a docu-
25 ment of title a document must purport to be issued by or
26 addressed to a bailee and purport to cover goods in the bailee's

1 possession which are either identified or are fungible portions
2 of an identified mass.

3 (16) "Fault" means wrongful act, omission, or breach.

4 (17) "Fungible" with respect to goods or securities means
5 goods or securities of which any unit is, by nature or usage of
6 trade, the equivalent of any other like unit. Goods which are
7 not fungible shall be deemed fungible for the purposes of this
8 act to the extent that under a particular agreement or document
9 unlike units are treated as equivalents.

10 (18) "Genuine" means free of forgery or counterfeiting.

11 (19) "Good faith" means honesty in fact in the conduct or
12 transaction concerned.

13 (20) "Holder", ~~means a person who is in possession of a~~
14 ~~document of title or an instrument or a certificated security~~
15 ~~drawn, issued, or indorsed to him or her or to his or her order~~
16 ~~or to bearer or in blank~~ WITH RESPECT TO A NEGOTIABLE INSTRU-
17 MENT, MEANS THE PERSON IN POSSESSION IF THE INSTRUMENT IS PAYABLE
18 TO BEARER OR, IN THE CASE OF AN INSTRUMENT PAYABLE TO AN IDENTI-
19 FIED PERSON, IF THE IDENTIFIED PERSON IS IN POSSESSION. HOLDER,
20 WITH RESPECT TO A DOCUMENT OF TITLE, MEANS THE PERSON IN POSSES-
21 SION IF THE GOODS ARE DELIVERABLE TO BEARER OR TO THE ORDER OF
22 THE PERSON IN POSSESSION.

23 (21) To "honor" is to pay or to accept and pay, or where a
24 credit so engages to purchase or discount a draft complying with
25 the terms of the credit.

1 (22) "Insolvency proceedings" includes any assignment for
2 the benefit of creditors or other proceedings intended to
3 liquidate or rehabilitate the estate of the person involved.

4 (23) A person is "insolvent" who either has ceased to pay
5 his or her debts in the ordinary course of business or cannot pay
6 his or her debts as they become due or is insolvent within the
7 meaning of the federal bankruptcy law.

8 (24) "Money" means a medium of exchange authorized or
9 adopted by a domestic or foreign government ~~as a part of its~~
10 ~~currency~~ AND INCLUDES A MONETARY UNIT OF ACCOUNT ESTABLISHED BY
11 AN INTERGOVERNMENTAL ORGANIZATION OR BY AGREEMENT BETWEEN 2 OR
12 MORE NATIONS.

13 (25) A person has "notice" of a fact when:

14 (a) He or she has actual knowledge of it; or

15 (b) He or she has received a notice or notification of it;
16 or

17 (c) From all the facts and circumstances known to him or her
18 at the time in question he or she has reason to know that it
19 exists. A person "knows" or has "knowledge" of a fact when he or
20 she has actual knowledge of it. "Discover" or "learn" or a word
21 or phrase of similar import refers to knowledge rather than to
22 reason to know. The time and circumstances under which a notice
23 or notification may cease to be effective are not determined by
24 this act.

25 (26) A person "notifies" or "gives" a notice or notification
26 to another by taking such steps as may be reasonably required to
27 inform the other in ordinary course whether or not such other

1 actually comes to know of it. A person "receives" a notice or
2 notification when:

3 (a) It comes to his or her attention; or

4 (b) It is duly delivered at the place of business through
5 which the contract was made or at any other place held out by him
6 or her as the place for receipt of such communications.

7 (27) Notice, knowledge, or a notice or notification received
8 by an organization is effective for a particular transaction from
9 the time when it is brought to the attention of the individual
10 conducting that transaction, and in any event from the time when
11 it would have been brought to the individual's attention if the
12 organization had exercised due diligence. An organization exer-
13 cises due diligence if it maintains reasonable routines for com-
14 municating significant information to the person conducting the
15 transaction and there is reasonable compliance with the
16 routines. Due diligence does not require an individual acting
17 for the organization to communicate information unless such com-
18 munication is part of his or her regular duties or unless he or
19 she has reason to know of the transaction and that the transac-
20 tion would be materially affected by the information.

21 (28) "Organization" includes a corporation, government, or
22 governmental subdivision or agency, business trust, estate,
23 trust, partnership or association, 2 or more persons having a
24 joint or common interest, or any other legal or commercial
25 entity.

1 (29) "Party", as distinct from "third party", means a person
2 who has engaged in a transaction or made an agreement within this
3 act.

4 (30) "Person" includes an individual or an organization (see
5 section 1102).

6 (31) "Presumption" or "presumed" means that the trier of
7 fact must find the existence of the fact presumed unless and
8 until evidence is introduced which would support a finding of its
9 nonexistence.

10 (32) "Purchase" includes taking by sale, discount, negotia-
11 tion, mortgage, pledge, lien, issue or reissue, gift, or any
12 other voluntary transaction creating an interest in property.

13 (33) "Purchaser" means a person who takes by purchase.

14 (34) "Remedy" means any remedial right to which an aggrieved
15 party is entitled with or without resort to a tribunal.

16 (35) "Representative" includes an agent, an officer of a
17 corporation or association, and a trustee, executor, or adminis-
18 trator of an estate, or any other person empowered to act for
19 another.

20 (36) "Rights" includes remedies.

21 (37) "Security interest" means an interest in personal prop-
22 erty or fixtures which secures payment or performance of an
23 obligation. The retention or reservation of title by a seller of
24 goods notwithstanding shipment or delivery to the buyer (section
25 2401) is limited in effect to a reservation of a "security
26 interest". The term also includes any interest of a buyer of
27 accounts or chattel paper which is subject to article 9. The

1 special property interest of a buyer of goods on identification
2 of ~~such~~ THOSE goods to a contract for sale under section 2401
3 is not a "security interest", but a buyer may also acquire a
4 "security interest" by complying with article 9. Unless a ~~lease~~
5 ~~or~~ consignment is intended as security, reservation of title
6 ~~hereunder~~ THEREUNDER is not a "security interest", but a con-
7 signment ~~is~~ in any event IS subject to the provisions on con-
8 signment sales (section 2326). Whether a ~~lease is intended as~~
9 A TRANSACTION CREATES A LEASE OR security INTEREST is ~~to be~~
10 determined by the facts of each case; however, ~~(a) the inclusion~~
11 ~~of an option to purchase does not of itself make the lease one~~
12 ~~intended for security, and (b) an agreement that upon compliance~~
13 ~~with the terms of the lease the lessee shall become or has the~~
14 ~~option to become the owner of the property for no additional con-~~
15 ~~sideration or for a nominal consideration does make the lease one~~
16 ~~intended for security~~ A TRANSACTION CREATES A SECURITY INTEREST
17 IF THE CONSIDERATION THE LESSEE IS TO PAY THE LESSOR FOR THE
18 RIGHT TO POSSESSION AND USE OF THE GOODS IS AN OBLIGATION FOR THE
19 TERM OF THE LEASE NOT SUBJECT TO TERMINATION BY THE LESSEE, AND
20 ANY OF THE FOLLOWING:

21 (A) THE ORIGINAL TERM OF THE LEASE IS EQUAL TO OR GREATER
22 THAN THE REMAINING ECONOMIC LIFE OF THE GOODS.

23 (B) THE LESSEE IS BOUND TO RENEW THE LEASE FOR THE REMAINING
24 ECONOMIC LIFE OF THE GOODS OR IS BOUND TO BECOME THE OWNER OF THE
25 GOODS.

26 (C) THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR THE
27 REMAINING ECONOMIC LIFE OF THE GOODS FOR NO ADDITIONAL

1 CONSIDERATION OR NOMINAL ADDITIONAL CONSIDERATION UPON COMPLIANCE
2 WITH THE LEASE AGREEMENT.

3 (D) THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE
4 GOODS FOR NO ADDITIONAL CONSIDERATION OR NOMINAL ADDITIONAL CON-
5 sideration UPON COMPLIANCE WITH THE LEASE AGREEMENT.

6 A TRANSACTION DOES NOT CREATE A SECURITY INTEREST MERELY
7 BECAUSE IT PROVIDES ANY OF THE FOLLOWING:

8 (A) THE PRESENT VALUE OF THE CONSIDERATION THE LESSEE IS
9 OBLIGATED TO PAY THE LESSOR FOR THE RIGHT TO POSSESSION AND USE
10 OF THE GOODS IS SUBSTANTIALLY EQUAL TO OR IS GREATER THAN THE
11 FAIR MARKET VALUE OF THE GOODS AT THE TIME THE LEASE IS ENTERED
12 INTO.

13 (B) THE LESSEE ASSUMES RISK OF LOSS OF THE GOODS, OR AGREES
14 TO PAY TAXES, INSURANCE, FILING, RECORDING, OR REGISTRATION FEES,
15 OR SERVICE OR MAINTENANCE COSTS WITH RESPECT TO THE GOODS.

16 (C) THE LESSEE HAS AN OPTION TO RENEW THE LEASE OR TO BECOME
17 THE OWNER OF THE GOODS.

18 (D) THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR A FIXED
19 RENT THAT IS EQUAL TO OR GREATER THAN THE REASONABLY PREDICTABLE
20 FAIR MARKET RENT FOR THE USE OF THE GOODS FOR THE TERM OF THE
21 RENEWAL AT THE TIME THE OPTION IS TO BE PERFORMED.

22 (E) THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE
23 GOODS FOR A FIXED PRICE THAT IS EQUAL TO OR GREATER THAN THE REA-
24 SONABLY PREDICTABLE FAIR MARKET VALUE OF THE GOODS AT THE TIME
25 THE OPTION IS TO BE PERFORMED.

26 AS USED IN THIS SUBSECTION:

1 (A) ADDITIONAL CONSIDERATION IS NOT NOMINAL IF WHEN THE
2 OPTION TO RENEW THE LEASE IS GRANTED TO THE LESSEE THE RENT IS
3 STATED TO BE THE FAIR MARKET RENT FOR THE USE OF THE GOODS FOR
4 THE TERM OF THE RENEWAL DETERMINED AT THE TIME THE OPTION IS TO
5 BE PERFORMED, OR WHEN THE OPTION TO BECOME THE OWNER OF THE GOODS
6 IS GRANTED TO THE LESSEE, THE PRICE IS STATED TO BE THE FAIR
7 MARKET VALUE OF THE GOODS DETERMINED AT THE TIME THE OPTION IS TO
8 BE PERFORMED. ADDITIONAL CONSIDERATION IS NOMINAL IF IT IS LESS
9 THAN THE LESSEE'S REASONABLY PREDICTABLE COST OF PERFORMING UNDER
10 THE LEASE AGREEMENT IF THE OPTION IS NOT EXERCISED.

11 (B) "PRESENT VALUE" MEANS THE AMOUNT AS OF A DATE CERTAIN OF
12 1 OR MORE SUMS PAYABLE IN THE FUTURE, DISCOUNTED TO THE DATE
13 CERTAIN. THE DISCOUNT IS DETERMINED BY THE INTEREST RATE SPECI-
14 FIED BY THE PARTIES IF THE RATE IS NOT MANIFESTLY UNREASONABLE AT
15 THE TIME THE TRANSACTION IS ENTERED INTO; OTHERWISE, THE DISCOUNT
16 IS DETERMINED BY A COMMERCIALY REASONABLE RATE THAT TAKES INTO
17 ACCOUNT THE FACTS AND CIRCUMSTANCES OF EACH CASE AT THE TIME THE
18 TRANSACTION WAS ENTERED INTO.

19 (C) "REASONABLY PREDICTABLE" AND "REMAINING ECONOMIC LIFE OF
20 THE GOODS" ARE TO BE DETERMINED WITH REFERENCE TO THE FACTS AND
21 CIRCUMSTANCES AT THE TIME THE TRANSACTION IS ENTERED INTO.

22 (38) "Send" in connection with any writing or notice means
23 to deposit in the mail or deliver for transmission by any other
24 usual means of communication with postage or cost of transmission
25 provided for and properly addressed and in the case of an instru-
26 ment to an address specified thereon or otherwise agreed, or if
27 there be none to any address reasonable under the circumstances.

1 The receipt of any writing or notice within the time at which it
2 would have arrived, if properly sent, has the effect of a proper
3 sending.

4 (39) "Signed" includes any symbol executed or adopted by a
5 party with present intention to authenticate a writing, including
6 a carbon copy of his or her signature.

7 (40) "Surety" includes guarantor.

8 (41) "Telegram" includes a message transmitted by radio,
9 teletype, cable, any mechanical method of transmission, or the
10 like.

11 (42) "Term" means that portion of an agreement which relates
12 to a particular matter.

13 (43) "Unauthorized" signature ~~or indorsement~~ means one
14 made without actual, implied or apparent authority and includes a
15 forgery.

16 (44) "Value". Except as otherwise provided with respect to
17 negotiable instruments and bank collections (sections 3303, 4208,
18 and 4209) a person gives "value" for rights if the person
19 acquires them:

20 (a) In return for a binding commitment to extend credit or
21 for the extension of immediately available credit whether or not
22 drawn upon and whether or not a charge-back is provided for in
23 the event of difficulties in collection; or

24 (b) As security for or in total or partial satisfaction of a
25 preexisting claim; or

26 (c) By accepting delivery pursuant to a preexisting contract
27 for purchase; or

1 (d) Generally, in return for any consideration sufficient to
2 support a simple contract.

3 (45) "Warehouse receipt" means a receipt issued by a person
4 engaged in the business of storing goods for hire.

5 (46) "Written" or "writing" includes printing, typewriting,
6 or any other intentional reduction to tangible form.

7 Sec. 1207. (1) A party who with explicit reservation of
8 rights performs or promises performance or assents to performance
9 in a manner demanded or offered by the other party does not
10 thereby prejudice the rights reserved. Such words as "without
11 prejudice", "under protest" or the like are sufficient.

12 (2) SUBSECTION (1) DOES NOT APPLY TO AN ACCORD AND
13 SATISFACTION.

14 ARTICLE 2A LEASES

15 PART 1. GENERAL PROVISIONS

16 SEC. 2A101. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
17 THE "UNIFORM COMMERCIAL CODE - LEASES".

18 SEC. 2A102. THIS ARTICLE APPLIES TO ANY TRANSACTION, REGARD-
19 LESS OF FORM, THAT CREATES A LEASE.

20 SEC. 2A103. (1) IN THIS ARTICLE UNLESS THE CONTEXT OTHER-
21 WISE REQUIRES:

22 (A) "BUYER IN ORDINARY COURSE OF BUSINESS" MEANS A PERSON
23 WHO IN GOOD FAITH AND WITHOUT KNOWLEDGE THAT THE SALE TO HIM OR
24 HER IS IN VIOLATION OF THE OWNERSHIP RIGHTS OR SECURITY INTEREST
25 OR LEASEHOLD INTEREST OF A THIRD PARTY IN THE GOODS BUYS IN ORDI-
26 NARY COURSE FROM A PERSON IN THE BUSINESS OF SELLING GOODS OF
27 THAT KIND BUT DOES NOT INCLUDE A PAWNBROKER. "BUYING" MAY BE FOR

1 CASH OR BY EXCHANGE OF OTHER PROPERTY OR ON SECURED OR UNSECURED
2 CREDIT AND INCLUDES RECEIVING GOODS OR DOCUMENTS OF TITLE UNDER A
3 PRE-EXISTING CONTRACT FOR SALE BUT DOES NOT INCLUDE A TRANSFER IN
4 BULK OR AS SECURITY FOR OR IN TOTAL OR PARTIAL SATISFACTION OF A
5 MONEY DEBT.

6 (B) "CANCELLATION" OCCURS WHEN EITHER PARTY PUTS AN END TO
7 THE LEASE CONTRACT FOR DEFAULT BY THE OTHER PARTY.

8 (C) "COMMERCIAL UNIT" MEANS SUCH A UNIT OF GOODS AS BY COM-
9 Mercial usage is a single whole for purposes of lease and divi-
10 sion of which materially impairs its character or value on the
11 market or in use. A commercial unit may be a single article, as
12 a machine, or a set of articles, as a suite of furniture or a
13 line of machinery, or a quantity, as a gross or carload, or any
14 other unit treated in use or in the relevant market as a single
15 whole.

16 (D) "CONFORMING" MEANS GOODS OR PERFORMANCE UNDER A LEASE
17 CONTRACT THAT ARE IN ACCORDANCE WITH THE OBLIGATIONS UNDER THE
18 LEASE CONTRACT.

19 (E) "CONSUMER LEASE" MEANS A LEASE THAT A LESSOR REGULARLY
20 ENGAGED IN THE BUSINESS OF LEASING OR SELLING MAKES TO A LESSEE
21 WHO IS AN INDIVIDUAL AND WHO TAKES UNDER THE LEASE PRIMARILY FOR
22 A PERSONAL, FAMILY, OR HOUSEHOLD PURPOSE, IF THE TOTAL PAYMENTS
23 TO BE MADE UNDER THE LEASE CONTRACT, EXCLUDING PAYMENTS FOR
24 OPTIONS TO RENEW OR BUY, DO NOT EXCEED \$25,000.00.

25 (F) "FAULT" MEANS WRONGFUL ACT, OMISSION, BREACH, OR
26 DEFAULT.

1 (G) "FINANCE LEASE" MEANS A LEASE WITH RESPECT TO WHICH ALL
2 OF THE FOLLOWING APPLY:

3 (i) THE LESSOR DOES NOT SELECT, MANUFACTURE, OR SUPPLY THE
4 GOODS.

5 (ii) THE LESSOR ACQUIRES THE GOODS OR THE RIGHT TO POSSES-
6 SION AND USE OF THE GOODS IN CONNECTION WITH THE LEASE.

7 (iii) ONE OF THE FOLLOWING OCCURS:

8 (A) THE LESSEE RECEIVES A COPY OF THE CONTRACT BY WHICH THE
9 LESSOR ACQUIRED THE GOODS OR THE RIGHT TO POSSESSION AND USE OF
10 THE GOODS BEFORE SIGNING THE LEASE CONTRACT.

11 (B) THE LESSEE'S APPROVAL OF THE CONTRACT BY WHICH THE
12 LESSOR ACQUIRED THE GOODS OR THE RIGHT TO POSSESSION AND USE OF
13 THE GOODS IS A CONDITION TO EFFECTIVENESS OF THE LEASE CONTRACT.

14 (C) THE LESSEE, BEFORE SIGNING THE LEASE CONTRACT, RECEIVES
15 AN ACCURATE AND COMPLETE STATEMENT DESIGNATING THE PROMISES AND
16 WARRANTIES, AND ANY DISCLAIMERS OF WARRANTIES, LIMITATIONS OR
17 MODIFICATIONS OF REMEDIES, OR LIQUIDATED DAMAGES, INCLUDING THOSE
18 OF A THIRD PARTY, SUCH AS THE MANUFACTURER OF THE GOODS, PROVIDED
19 TO THE LESSOR BY THE PERSON SUPPLYING THE GOODS IN CONNECTION
20 WITH OR AS PART OF THE CONTRACT BY WHICH THE LESSOR ACQUIRED THE
21 GOODS OR THE RIGHT TO POSSESSION AND USE OF THE GOODS.

22 (D) IF THE LEASE IS NOT A CONSUMER LEASE, THE LESSOR, BEFORE
23 THE LESSEE SIGNS THE LEASE CONTRACT, INFORMS THE LESSEE IN WRIT-
24 ING OF THE FOLLOWING:

25 (I) THE IDENTITY OF THE PERSON SUPPLYING THE GOODS TO THE
26 LESSOR, UNLESS THE LESSEE HAS SELECTED THAT PERSON AND DIRECTED

1 THE LESSOR TO ACQUIRE THE GOODS OR THE RIGHT TO POSSESSION AND
2 USE OF THE GOODS FROM THAT PERSON.

3 (II) THE LESSEE IS ENTITLED UNDER THIS ARTICLE TO THE PROM-
4 ISES AND WARRANTIES, INCLUDING THOSE OF ANY THIRD PARTY, PROVIDED
5 TO THE LESSOR BY THE PERSON SUPPLYING THE GOODS IN CONNECTION
6 WITH OR AS PART OF THE CONTRACT BY WHICH THE LESSOR ACQUIRED THE
7 GOODS OR THE RIGHT TO POSSESSION AND USE OF THE GOODS.

8 (III) THE LESSEE MAY COMMUNICATE WITH THE PERSON SUPPLYING
9 THE GOODS TO THE LESSOR AND RECEIVE AN ACCURATE AND COMPLETE
10 STATEMENT OF THOSE PROMISES AND WARRANTIES, INCLUDING ANY DIS-
11 CLAIMERS AND LIMITATIONS OF THEM OR OF REMEDIES.

12 (H) "GOODS" MEANS ALL THINGS THAT ARE MOVABLE AT THE TIME OF
13 IDENTIFICATION TO THE LEASE CONTRACT, OR ARE FIXTURES (SECTION
14 2A309), BUT THE TERM DOES NOT INCLUDE MONEY, DOCUMENTS, INSTRU-
15 MENTS, ACCOUNTS, CHATTEL PAPER, GENERAL INTANGIBLES, OR MINERALS
16 OR THE LIKE, INCLUDING OIL AND GAS, BEFORE EXTRACTION. THE TERM
17 ALSO INCLUDES THE UNBORN YOUNG OF ANIMALS.

18 (I) "INSTALLMENT LEASE CONTRACT" MEANS A LEASE CONTRACT THAT
19 AUTHORIZES OR REQUIRES THE DELIVERY OF GOODS IN SEPARATE LOTS TO
20 BE SEPARATELY ACCEPTED, EVEN THOUGH THE LEASE CONTRACT CONTAINS A
21 CLAUSE "EACH DELIVERY IS A SEPARATE LEASE" OR ITS EQUIVALENT.

22 (J) "LEASE" MEANS A TRANSFER OF THE RIGHT TO POSSESSION AND
23 USE OF GOODS FOR A TERM IN RETURN FOR CONSIDERATION, BUT A SALE,
24 INCLUDING A SALE ON APPROVAL OR A SALE OR RETURN, OR RETENTION OR
25 CREATION OF A SECURITY INTEREST IS NOT A LEASE. UNLESS THE CON-
26 TEXT CLEARLY INDICATES OTHERWISE, THE TERM INCLUDES A SUBLEASE.

1 (K) "LEASE AGREEMENT" MEANS THE BARGAIN, WITH RESPECT TO THE
2 LEASE, OF THE LESSOR AND THE LESSEE IN FACT AS FOUND IN THEIR
3 LANGUAGE OR BY IMPLICATION FROM OTHER CIRCUMSTANCES INCLUDING
4 COURSE OF DEALING OR USAGE OF TRADE OR COURSE OF PERFORMANCE AS
5 PROVIDED IN THIS ARTICLE. UNLESS THE CONTEXT CLEARLY INDICATES
6 OTHERWISE, THE TERM INCLUDES A SUBLEASE AGREEMENT.

7 (L) "LEASE CONTRACT" MEANS THE TOTAL LEGAL OBLIGATION THAT
8 RESULTS FROM THE LEASE AGREEMENT AS AFFECTED BY THIS ARTICLE AND
9 ANY OTHER APPLICABLE RULES OF LAW. UNLESS THE CONTEXT CLEARLY
10 INDICATES OTHERWISE, THE TERM INCLUDES A SUBLEASE CONTRACT.

11 (M) "LEASEHOLD INTEREST" MEANS THE INTEREST OF THE LESSOR OR
12 THE LESSEE UNDER A LEASE CONTRACT.

13 (N) "LESSEE" MEANS A PERSON WHO ACQUIRES THE RIGHT TO POS-
14 SESSION AND USE OF GOODS UNDER A LEASE. UNLESS THE CONTEXT
15 CLEARLY INDICATES OTHERWISE, THE TERM INCLUDES A SUBLESSEE.

16 (O) "LESSEE IN ORDINARY COURSE OF BUSINESS" MEANS A PERSON
17 WHO IN GOOD FAITH AND WITHOUT KNOWLEDGE THAT THE LEASE TO HIM OR
18 HER IS IN VIOLATION OF THE OWNERSHIP RIGHTS OR SECURITY INTEREST
19 OR LEASEHOLD INTEREST OF A THIRD PARTY IN THE GOODS LEASES IN
20 ORDINARY COURSE FROM A PERSON IN THE BUSINESS OF SELLING OR LEAS-
21 ING GOODS OF THAT KIND BUT DOES NOT INCLUDE A PAWNBROKER.

22 "LEASING" MAY BE FOR CASH OR BY EXCHANGE OF OTHER PROPERTY OR ON
23 SECURED OR UNSECURED CREDIT AND INCLUDES RECEIVING GOODS OR DOCU-
24 MENTS OF TITLE UNDER A PRE-EXISTING LEASE CONTRACT BUT DOES NOT
25 INCLUDE A TRANSFER IN BULK OR AS SECURITY FOR OR IN TOTAL OR PAR-
26 TIAL SATISFACTION OF A MONEY DEBT.

1 (P) "LESSOR" MEANS A PERSON WHO TRANSFERS THE RIGHT TO
2 POSSESSION AND USE OF GOODS UNDER A LEASE. UNLESS THE CONTEXT
3 CLEARLY INDICATES OTHERWISE, THE TERM INCLUDES A SUBLESSOR.

4 (Q) "LESSOR'S RESIDUAL INTEREST" MEANS THE LESSOR'S INTEREST
5 IN THE GOODS AFTER EXPIRATION, TERMINATION, OR CANCELLATION OF
6 THE LEASE CONTRACT.

7 (R) "LIEN" MEANS A CHARGE AGAINST OR INTEREST IN GOODS TO
8 SECURE PAYMENT OF A DEBT OR PERFORMANCE OF AN OBLIGATION, BUT THE
9 TERM DOES NOT INCLUDE A SECURITY INTEREST.

10 (S) "LOT" MEANS A PARCEL OR A SINGLE ARTICLE THAT IS THE
11 SUBJECT MATTER OF A SEPARATE LEASE OR DELIVERY, WHETHER OR NOT IT
12 IS SUFFICIENT TO PERFORM THE LEASE CONTRACT.

13 (T) "MERCHANT LESSEE" MEANS A LESSEE THAT IS A MERCHANT WITH
14 RESPECT TO GOODS OF THE KIND SUBJECT TO THE LEASE.

15 (U) "PRESENT VALUE" MEANS THE AMOUNT AS OF A DATE CERTAIN OF
16 1 OR MORE SUMS PAYABLE IN THE FUTURE, DISCOUNTED TO THE DATE
17 CERTAIN. THE DISCOUNT IS DETERMINED BY THE INTEREST RATE SPECI-
18 FIED BY THE PARTIES IF THE RATE WAS NOT MANIFESTLY UNREASONABLE
19 AT THE TIME THE TRANSACTION WAS ENTERED INTO; OTHERWISE, THE DIS-
20 COUNT IS DETERMINED BY A COMMERCIALY REASONABLE RATE THAT TAKES
21 INTO ACCOUNT THE FACTS AND CIRCUMSTANCES OF EACH CASE AT THE TIME
22 THE TRANSACTION WAS ENTERED INTO.

23 (V) "PURCHASE" INCLUDES TAKING BY SALE, LEASE, MORTGAGE,
24 SECURITY INTEREST, PLEDGE, GIFT, OR ANY OTHER VOLUNTARY TRANSAC-
25 TION CREATING AN INTEREST IN GOODS.

1 (W) "SUBLEASE" MEANS A LEASE OF GOODS THE RIGHT TO
 2 POSSESSION AND USE OF WHICH WAS ACQUIRED BY THE LESSOR AS A
 3 LESSEE UNDER AN EXISTING LEASE.

4 (X) "SUPPLIER" MEANS A PERSON FROM WHOM A LESSOR BUYS OR
 5 LEASES GOODS TO BE LEASED UNDER A FINANCE LEASE.

6 (Y) "SUPPLY CONTRACT" MEANS A CONTRACT UNDER WHICH A LESSOR
 7 BUYS OR LEASES GOODS TO BE LEASED.

8 (Z) "TERMINATION" OCCURS WHEN EITHER PARTY PURSUANT TO A
 9 POWER CREATED BY AGREEMENT OR LAW PUTS AN END TO THE LEASE CON-
 10 TRACT OTHERWISE THAN FOR DEFAULT.

11 (2) OTHER DEFINITIONS APPLYING TO THIS ARTICLE AND THE SEC-
 12 TIONS IN WHICH THEY APPEAR ARE:

13 "ACCESSIONS". SECTION 2A310(1).

14 "CONSTRUCTION MORTGAGE". SECTION 2A309(1)(D).

15 "ENCUMBRANCE". SECTION 2A309(1)(E).

16 "FIXTURES". SECTION 2A309(1)(A).

17 "FIXTURE FILING". SECTION 2A309(1)(B).

18 "PURCHASE MONEY LEASE". SECTION 2A309(1)(C).

19 (3) THE FOLLOWING DEFINITIONS IN OTHER ARTICLES APPLY TO
 20 THIS ARTICLE:

21 "ACCOUNT". SECTION 9106.

22 "BETWEEN MERCHANTS". SECTION 2104(3).

23 "BUYER". SECTION 2103(1)(A).

24 "CHATTEL PAPER". SECTION 9105(1)(B).

25 "CONSUMER GOODS". SECTION 9109(1).

26 "DOCUMENT". SECTION 9105(1)(F).

1 "ENTRUSTING". SECTION 2403(3).

2 "GENERAL INTANGIBLES". SECTION 9106.

3 "GOOD FAITH". SECTION 2103(1)(B).

4 "INSTRUMENT". SECTION 9105(1)(I).

5 "MERCHANT". SECTION 2104(1).

6 "MORTGAGE". SECTION 9105(1)(J).

7 "PURSUANT TO COMMITMENT". SECTION 9105(1)(K).

8 "RECEIPT". SECTION 2103(1)(C).

9 "SALE". SECTION 2106(1).

10 "SALE ON APPROVAL". SECTION 2326(1)(A).

11 "SALE OR RETURN". SECTION 2326(1)(B).

12 "SELLER". SECTION 2103(1)(D).

13 (4) IN ADDITION ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND

14 PRINCIPLES OF CONSTRUCTION AND INTERPRETATION APPLICABLE THROUGH-

15 OUT THIS ARTICLE.

16 SEC. 2A104. (1) A LEASE, ALTHOUGH SUBJECT TO THIS ARTICLE,

17 IS ALSO SUBJECT TO ALL OF THE FOLLOWING:

18 (A) A CERTIFICATE OF TITLE STATUTE OF THIS STATE, INCLUDING,

19 BUT NOT LIMITED TO, ACT NO. 160 OF THE PUBLIC ACTS OF 1976, BEING

20 SECTIONS 281.1201 TO 281.1223 OF THE MICHIGAN COMPILED LAWS; THE

21 MOBILE HOME COMMISSION ACT, ACT NO. 96 OF THE PUBLIC ACTS OF

22 1987, BEING SECTIONS 125.2301 TO 125.2349 OF THE MICHIGAN

23 COMPILED LAWS; AND CHAPTER II OF THE MICHIGAN VEHICLE CODE, ACT

24 NO. 300 OF THE PUBLIC ACTS OF 1949, BEING SECTIONS 257.201 TO

25 257.259 OF THE MICHIGAN COMPILED LAWS.

26 (B) A CERTIFICATE OF TITLE STATUTE OF ANOTHER JURISDICTION

27 (SECTION 2A105).

1 (C) THE MICHIGAN CONSUMER PROTECTION ACT, ACT NO. 331 OF THE
2 PUBLIC ACTS OF 1976, BEING SECTIONS 445.901 TO 445.922' OF THE
3 MICHIGAN COMPILED LAWS.

4 (2) EXCEPT FOR SECTIONS 2A105, 2A304(3), AND 2A305(3), IN
5 CASE OF CONFLICT BETWEEN THIS ARTICLE AND A STATUTE REFERRED TO
6 IN SUBSECTION (1), THE STATUTE CONTROLS.

7 (3) FAILURE TO COMPLY WITH ANY APPLICABLE STATUTE HAS ONLY
8 THE EFFECT SPECIFIED IN THE STATUTE.

9 SEC. 2A105. SUBJECT TO THE PROVISIONS OF SECTIONS 2A304(3)
10 AND 2A305(3), WITH RESPECT TO GOODS COVERED BY A CERTIFICATE OF
11 TITLE ISSUED UNDER A STATUTE OF THIS STATE OR OF ANOTHER JURIS-
12 DICTION, COMPLIANCE AND THE EFFECT OF COMPLIANCE OR NONCOMPLIANCE
13 WITH A CERTIFICATE OF TITLE STATUTE ARE GOVERNED BY THE LAW OF
14 THE JURISDICTION ISSUING THE CERTIFICATE UNTIL THE EARLIER OF THE
15 FOLLOWING:

16 (A) SURRENDER OF THE CERTIFICATE.

17 (B) FOUR MONTHS AFTER THE GOODS ARE REMOVED FROM THAT JURIS-
18 DICTION AND THEREAFTER UNTIL A NEW CERTIFICATE OF TITLE IS ISSUED
19 BY ANOTHER JURISDICTION.

20 SEC. 2A106. (1) IF THE LAW CHOSEN BY THE PARTIES TO A CON-
21 SUMER LEASE IS THAT OF A JURISDICTION OTHER THAN A JURISDICTION
22 IN WHICH THE LESSEE RESIDES AT THE TIME THE LEASE AGREEMENT
23 BECOMES ENFORCEABLE OR WITHIN 30 DAYS THEREAFTER OR IN WHICH THE
24 GOODS ARE TO BE USED, THE CHOICE IS NOT ENFORCEABLE.

25 (2) IF THE JUDICIAL FORUM CHOSEN BY THE PARTIES TO A CON-
26 SUMER LEASE IS A FORUM THAT WOULD NOT OTHERWISE HAVE JURISDICTION
27 OVER THE LESSEE, THE CHOICE IS NOT ENFORCEABLE.

1 SEC. 2A107. A CLAIM OR RIGHT ARISING OUT OF AN ALLEGED
2 DEFAULT OR BREACH OF WARRANTY MAY BE DISCHARGED IN WHOLE OR IN
3 PART WITHOUT CONSIDERATION BY A WRITTEN WAIVER OR RENUNCIATION
4 SIGNED AND DELIVERED BY THE AGGRIEVED PARTY.

5 SEC. 2A108. (1) IF A COURT, AS A MATTER OF LAW, FINDS A
6 LEASE CONTRACT OR ANY CLAUSE OF A LEASE CONTRACT TO HAVE BEEN
7 UNCONSCIONABLE AT THE TIME IT WAS MADE, THE COURT MAY REFUSE TO
8 ENFORCE THE LEASE CONTRACT, OR IT MAY ENFORCE THE REMAINDER OF
9 THE LEASE CONTRACT WITHOUT THE UNCONSCIONABLE CLAUSE, OR IT MAY
10 SO LIMIT THE APPLICATION OF ANY UNCONSCIONABLE CLAUSE AS TO AVOID
11 ANY UNCONSCIONABLE RESULT.

12 (2) WITH RESPECT TO A CONSUMER LEASE, IF A COURT, AS A
13 MATTER OF LAW, FINDS THAT A LEASE CONTRACT OR ANY CLAUSE OF A
14 LEASE CONTRACT HAS BEEN INDUCED BY UNCONSCIONABLE CONDUCT OR THAT
15 UNCONSCIONABLE CONDUCT HAS OCCURRED IN THE COLLECTION OF A CLAIM
16 ARISING FROM A LEASE CONTRACT, THE COURT MAY GRANT APPROPRIATE
17 RELIEF.

18 (3) BEFORE MAKING A FINDING OF UNCONSCIONABILITY UNDER
19 SUBSECTION (1) OR (2), THE COURT, ON ITS OWN MOTION OR THAT OF A
20 PARTY, SHALL AFFORD THE PARTIES A REASONABLE OPPORTUNITY TO
21 PRESENT EVIDENCE AS TO THE SETTING, PURPOSE, AND EFFECT OF THE
22 LEASE CONTRACT OR CLAUSE THEREOF, OR OF THE CONDUCT.

23 (4) IN AN ACTION IN WHICH THE LESSEE CLAIMS UNCONSCIONABIL-
24 ITY WITH RESPECT TO A CONSUMER LEASE, ALL OF THE FOLLOWING
25 APPLY:

1 (A) IF THE COURT FINDS UNCONSCIONABILITY UNDER
2 SUBSECTION (1) OR (2), THE COURT SHALL AWARD REASONABLE
3 ATTORNEY'S FEES TO THE LESSEE.

4 (B) IF THE COURT DOES NOT FIND UNCONSCIONABILITY AND THE
5 LESSEE CLAIMING UNCONSCIONABILITY HAS BROUGHT OR MAINTAINED AN
6 ACTION HE OR SHE KNEW TO BE GROUNDLESS, THE COURT SHALL AWARD
7 REASONABLE ATTORNEY'S FEES TO THE PARTY AGAINST WHOM THE CLAIM IS
8 MADE.

9 (C) IN DETERMINING ATTORNEY'S FEES, THE AMOUNT OF THE RECOV-
10 ERY ON BEHALF OF THE CLAIMANT UNDER SUBSECTIONS (1) AND (2) IS
11 NOT CONTROLLING.

12 SEC. 2A109. (1) A TERM PROVIDING THAT 1 PARTY OR HIS OR HER
13 SUCCESSOR IN INTEREST MAY ACCELERATE PAYMENT OR PERFORMANCE OR
14 REQUIRE COLLATERAL OR ADDITIONAL COLLATERAL "AT WILL" OR WHEN HE
15 OR SHE DEEMS HIMSELF OR HERSELF INSECURE OR IN WORDS OF SIMILAR
16 IMPORT MUST BE CONSTRUED TO MEAN THAT HE OR SHE HAS POWER TO DO
17 SO ONLY IF HE OR SHE IN GOOD FAITH BELIEVES THAT THE PROSPECT OF
18 PAYMENT OR PERFORMANCE IS IMPAIRED.

19 (2) WITH RESPECT TO A CONSUMER LEASE, THE BURDEN OF ESTAB-
20 LISHING GOOD FAITH UNDER SUBSECTION (1) IS ON THE PARTY WHO EXER-
21 CISED THE POWER; OTHERWISE, THE BURDEN OF ESTABLISHING LACK OF
22 GOOD FAITH IS ON THE PARTY AGAINST WHOM THE POWER HAS BEEN
23 EXERCISED.

24 SEC. 2A110. WITH RESPECT TO A MOTOR VEHICLE OR TRAILER,
25 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A TRANSACTION DOES
26 NOT CREATE A SALE OR SECURITY INTEREST MERELY BECAUSE IT PROVIDES
27 THAT THE RENTAL PRICE IS PERMITTED OR REQUIRED TO BE ADJUSTED

1 UNDER THE AGREEMENT EITHER UPWARD OR DOWNWARD BY REFERENCE TO THE
2 AMOUNT REALIZED UPON SALE OR OTHER DISPOSITION OF THE MOTOR VEHI-
3 CLE OR TRAILER.

4 PART 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

5 SEC. 2A201. (1) A LEASE CONTRACT IS NOT ENFORCEABLE BY WAY
6 OF ACTION OR DEFENSE UNLESS 1 OF THE FOLLOWING APPLIES:

7 (A) THE TOTAL PAYMENTS TO BE MADE UNDER THE LEASE CONTRACT,
8 EXCLUDING PAYMENTS FOR OPTIONS TO RENEW OR BUY, ARE LESS THAN
9 \$1,000.00.

10 (B) THERE IS A WRITING, SIGNED BY THE PARTY AGAINST WHOM
11 ENFORCEMENT IS SOUGHT OR BY THAT PARTY'S AUTHORIZED AGENT, SUFFI-
12 CIENT TO INDICATE THAT A LEASE CONTRACT HAS BEEN MADE BETWEEN THE
13 PARTIES AND TO DESCRIBE THE GOODS LEASED AND THE LEASE TERM.

14 (2) ANY DESCRIPTION OF LEASED GOODS OR OF THE LEASE TERM IS
15 SUFFICIENT AND SATISFIES SUBSECTION (1)(B), WHETHER OR NOT IT IS
16 SPECIFIC, IF IT REASONABLY IDENTIFIES WHAT IS DESCRIBED.

17 (3) A WRITING IS NOT INSUFFICIENT BECAUSE IT OMITTS OR INCOR-
18 RECTLY STATES A TERM AGREED UPON, BUT THE LEASE CONTRACT IS NOT
19 ENFORCEABLE UNDER SUBSECTION (1)(B) BEYOND THE LEASE TERM AND THE
20 QUANTITY OF GOODS SHOWN IN THE WRITING.

21 (4) A LEASE CONTRACT THAT DOES NOT SATISFY THE REQUIREMENTS
22 OF SUBSECTION (1), BUT WHICH IS VALID IN OTHER RESPECTS, IS
23 ENFORCEABLE FOR ANY OF THE FOLLOWING:

24 (A) IF THE GOODS ARE TO BE SPECIALLY MANUFACTURED OR
25 OBTAINED FOR THE LESSEE AND ARE NOT SUITABLE FOR LEASE OR SALE TO
26 OTHERS IN THE ORDINARY COURSE OF THE LESSOR'S BUSINESS, AND THE
27 LESSOR, BEFORE NOTICE OF REPUDIATION IS RECEIVED AND UNDER

1 CIRCUMSTANCES THAT REASONABLY INDICATE THAT THE GOODS ARE FOR THE
2 LESSEE, HAS MADE EITHER A SUBSTANTIAL BEGINNING OF THEIR MANUFAC-
3 TURE OR COMMITMENTS FOR THEIR PROCUREMENT.

4 (B) IF THE PARTY AGAINST WHOM ENFORCEMENT IS SOUGHT ADMITS
5 IN THAT PARTY'S PLEADING, TESTIMONY, OR OTHERWISE IN COURT THAT A
6 LEASE CONTRACT WAS MADE, BUT THE LEASE CONTRACT IS NOT ENFORCE-
7 ABLE UNDER THIS PROVISION BEYOND THE QUANTITY OF GOODS ADMITTED.

8 (C) WITH RESPECT TO GOODS THAT HAVE BEEN RECEIVED AND
9 ACCEPTED BY THE LESSEE.

10 (5) THE LEASE TERM UNDER A LEASE CONTRACT REFERRED TO IN
11 SUBSECTION (4) IS DETERMINED AS FOLLOWS:

12 (A) TERM SPECIFIED IF THERE IS A WRITING SIGNED BY THE PARTY
13 AGAINST WHOM ENFORCEMENT IS SOUGHT OR BY THAT PARTY'S AUTHORIZED
14 AGENT SPECIFYING THE LEASE TERM.

15 (B) IF THE PARTY AGAINST WHOM ENFORCEMENT IS SOUGHT ADMITS
16 IN THAT PARTY'S PLEADING, TESTIMONY, OR OTHERWISE IN COURT A
17 LEASE TERM, THE TERM SO ADMITTED.

18 (C) A REASONABLE LEASE TERM.

19 SEC. 2A202. TERMS WITH RESPECT TO WHICH THE CONFIRMATORY
20 MEMORANDA OF THE PARTIES AGREE OR WHICH ARE OTHERWISE SET FORTH
21 IN A WRITING INTENDED BY THE PARTIES AS A FINAL EXPRESSION OF
22 THEIR AGREEMENT WITH RESPECT TO SUCH TERMS AS ARE INCLUDED
23 THEREIN MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR AGREE-
24 MENT OR OF A CONTEMPORANEOUS ORAL AGREEMENT BUT MAY BE EXPLAINED
25 OR SUPPLEMENTED BY ANY OF THE FOLLOWING:

26 (A) BY COURSE OF DEALING OR USAGE OF TRADE OR BY COURSE OF
27 PERFORMANCE.

1 (B) BY EVIDENCE OF CONSISTENT ADDITIONAL TERMS UNLESS THE
2 COURT FINDS THE WRITING TO HAVE BEEN INTENDED ALSO AS A COMPLETE
3 AND EXCLUSIVE STATEMENT OF THE TERMS OF THE AGREEMENT.

4 SEC. 2A203. THE AFFIXING OF A SEAL TO A WRITING EVIDENCING
5 A LEASE CONTRACT OR AN OFFER TO ENTER INTO A LEASE CONTRACT DOES
6 NOT RENDER THE WRITING A SEALED INSTRUMENT AND THE LAW WITH
7 RESPECT TO SEALED INSTRUMENTS DOES NOT APPLY TO THE LEASE CON-
8 TRACT OR OFFER.

9 SEC. 2A204. (1) A LEASE CONTRACT MAY BE MADE IN ANY MANNER
10 SUFFICIENT TO SHOW AGREEMENT, INCLUDING CONDUCT BY BOTH PARTIES
11 WHICH RECOGNIZES THE EXISTENCE OF A LEASE CONTRACT.

12 (2) AN AGREEMENT SUFFICIENT TO CONSTITUTE A LEASE CONTRACT
13 MAY BE FOUND ALTHOUGH THE MOMENT OF ITS MAKING IS UNDETERMINED.

14 (3) ALTHOUGH 1 OR MORE TERMS ARE LEFT OPEN, A LEASE CONTRACT
15 DOES NOT FAIL FOR INDEFINITENESS IF THE PARTIES HAVE INTENDED TO
16 MAKE A LEASE CONTRACT AND THERE IS A REASONABLY CERTAIN BASIS FOR
17 GIVING AN APPROPRIATE REMEDY.

18 SEC. 2A205. AN OFFER BY A MERCHANT TO LEASE GOODS TO OR
19 FROM ANOTHER PERSON IN A SIGNED WRITING THAT BY ITS TERMS GIVES
20 ASSURANCE IT WILL BE HELD OPEN IS NOT REVOCABLE, FOR LACK OF CON-
21 sideration, DURING THE TIME STATED OR, IF NO TIME IS STATED, FOR
22 A REASONABLE TIME, BUT IN NO EVENT MAY THE PERIOD OF IRREVOCABIL-
23 ITY EXCEED 3 MONTHS. ANY SUCH TERM OF ASSURANCE ON A FORM SUP-
24 PLIED BY THE OFFEREE MUST BE SEPARATELY SIGNED BY THE OFFEROR.

25 SEC. 2A206. (1) UNLESS OTHERWISE UNAMBIGUOUSLY INDICATED BY
26 THE LANGUAGE OR CIRCUMSTANCES, AN OFFER TO MAKE A LEASE CONTRACT

1 MUST BE CONSTRUED AS INVITING ACCEPTANCE IN ANY MANNER AND BY ANY
2 MEDIUM REASONABLE IN THE CIRCUMSTANCES.

3 (2) IF THE BEGINNING OF A REQUESTED PERFORMANCE IS A REASON-
4 ABLE MODE OF ACCEPTANCE, AN OFFEROR WHO IS NOT NOTIFIED OF ACCEP-
5 TANCE WITHIN A REASONABLE TIME MAY TREAT THE OFFER AS HAVING
6 LAPSED BEFORE ACCEPTANCE.

7 SEC. 2A207. (1) IF A LEASE CONTRACT INVOLVES REPEATED OCCA-
8 SIONS FOR PERFORMANCE BY EITHER PARTY WITH KNOWLEDGE OF THE
9 NATURE OF THE PERFORMANCE AND OPPORTUNITY FOR OBJECTION TO IT BY
10 THE OTHER, ANY COURSE OF PERFORMANCE ACCEPTED OR ACQUIESCED IN
11 WITHOUT OBJECTION IS RELEVANT TO DETERMINE THE MEANING OF THE
12 LEASE AGREEMENT.

13 (2) THE EXPRESS TERMS OF A LEASE AGREEMENT AND ANY COURSE OF
14 PERFORMANCE, AS WELL AS ANY COURSE OF DEALING AND USAGE OF TRADE,
15 MUST BE CONSTRUED WHENEVER REASONABLE AS CONSISTENT WITH EACH
16 OTHER, BUT IF THAT CONSTRUCTION IS UNREASONABLE, EXPRESS TERMS
17 CONTROL COURSE OF PERFORMANCE, COURSE OF PERFORMANCE CONTROLS
18 BOTH COURSE OF DEALING AND USAGE OF TRADE, AND COURSE OF DEALING
19 CONTROLS USAGE OF TRADE.

20 (3) SUBJECT TO THE PROVISIONS OF SECTION 2A-208 ON MODIFICA-
21 TION AND WAIVER, COURSE OF PERFORMANCE IS RELEVANT TO SHOW A
22 WAIVER OR MODIFICATION OF ANY TERM INCONSISTENT WITH THE COURSE
23 OF PERFORMANCE.

24 SEC. 2A208. (1) AN AGREEMENT MODIFYING A LEASE CONTRACT
25 NEEDS NO CONSIDERATION TO BE BINDING.

26 (2) A SIGNED LEASE AGREEMENT THAT EXCLUDES MODIFICATION OR
27 RESCISSION EXCEPT BY A SIGNED WRITING MAY NOT BE OTHERWISE

1 MODIFIED OR RESCINDED, BUT, EXCEPT AS BETWEEN MERCHANTS, SUCH A
2 REQUIREMENT ON A FORM SUPPLIED BY A MERCHANT MUST BE SEPARATELY
3 SIGNED BY THE OTHER PARTY.

4 (3) ALTHOUGH AN ATTEMPT AT MODIFICATION OR RESCISSION DOES
5 NOT SATISFY THE REQUIREMENTS OF SUBSECTION (2), IT MAY OPERATE AS
6 A WAIVER.

7 (4) A PARTY WHO HAS MADE A WAIVER AFFECTING AN EXECUTORY
8 PORTION OF A LEASE CONTRACT MAY RETRACT THE WAIVER BY REASONABLE
9 NOTIFICATION RECEIVED BY THE OTHER PARTY THAT STRICT PERFORMANCE
10 WILL BE REQUIRED OF ANY TERM WAIVED, UNLESS THE RETRACTION WOULD
11 BE UNJUST IN VIEW OF A MATERIAL CHANGE OF POSITION IN RELIANCE ON
12 THE WAIVER.

13 SEC. 2A209. (1) THE BENEFIT OF A SUPPLIER'S PROMISES TO THE
14 LESSOR UNDER THE SUPPLY CONTRACT AND OF ALL WARRANTIES, WHETHER
15 EXPRESS OR IMPLIED, INCLUDING THOSE OF ANY THIRD PARTY PROVIDED
16 IN CONNECTION WITH OR AS PART OF THE SUPPLY CONTRACT, EXTENDS TO
17 THE LESSEE TO THE EXTENT OF THE LESSEE'S LEASEHOLD INTEREST UNDER
18 A FINANCE LEASE RELATED TO THE SUPPLY CONTRACT, BUT IS SUBJECT TO
19 THE TERMS OF THE WARRANTY AND OF THE SUPPLY CONTRACT AND ALL
20 DEFENSES OR CLAIMS ARISING THEREFROM.

21 (2) THE EXTENSION OF THE BENEFIT OF A SUPPLIER'S PROMISES
22 AND OF WARRANTIES TO THE LESSEE DOES NOT DO EITHER OF THE
23 FOLLOWING:

24 (A) MODIFY THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE
25 SUPPLY CONTRACT, WHETHER ARISING THEREFROM OR OTHERWISE.

26 (B) IMPOSE ANY DUTY OR LIABILITY UNDER THE SUPPLY CONTRACT
27 ON THE LESSEE.

1 (3) ANY MODIFICATION OR RESCISSION OF THE SUPPLY CONTRACT BY
2 THE SUPPLIER AND THE LESSOR IS EFFECTIVE BETWEEN THE SUPPLIER AND
3 THE LESSEE UNLESS, BEFORE THE MODIFICATION OR RESCISSION, THE
4 SUPPLIER HAS RECEIVED NOTICE THAT THE LESSEE HAS ENTERED INTO A
5 FINANCE LEASE RELATED TO THE SUPPLY CONTRACT. IF THE MODIFICA-
6 TION OR RESCISSION IS EFFECTIVE BETWEEN THE SUPPLIER AND THE
7 LESSEE, THE LESSOR IS DEEMED TO HAVE ASSUMED, IN ADDITION TO THE
8 OBLIGATIONS OF THE LESSOR TO THE LESSEE UNDER THE LEASE CONTRACT,
9 PROMISES OF THE SUPPLIER TO THE LESSOR AND WARRANTIES THAT WERE
10 SO MODIFIED OR RESCINDED AS THEY EXISTED AND WERE AVAILABLE TO
11 THE LESSEE BEFORE MODIFICATION OR RESCISSION.

12 (4) IN ADDITION TO THE EXTENSION OF THE BENEFIT OF THE
13 SUPPLIER'S PROMISES AND OF WARRANTIES TO THE LESSEE UNDER SUBSEC-
14 TION (1), THE LESSEE RETAINS ALL RIGHTS THAT THE LESSEE MAY HAVE
15 AGAINST THE SUPPLIER WHICH ARISE FROM AN AGREEMENT BETWEEN THE
16 LESSEE AND THE SUPPLIER OR UNDER OTHER LAW.

17 SEC. 2A210. (1) EXPRESS WARRANTIES BY THE LESSOR ARE CRE-
18 ATED AS FOLLOWS:

19 (A) ANY AFFIRMATION OF FACT OR PROMISE MADE BY THE LESSOR TO
20 THE LESSEE WHICH RELATES TO THE GOODS AND BECOMES PART OF THE
21 BASIS OF THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE GOODS
22 WILL CONFORM TO THE AFFIRMATION OR PROMISE.

23 (B) ANY DESCRIPTION OF THE GOODS WHICH IS MADE PART OF THE
24 BASIS OF THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE GOODS
25 WILL CONFORM TO THE DESCRIPTION.

1 (C) ANY SAMPLE OR MODEL THAT IS MADE PART OF THE BASIS OF
2 THE BARGAIN CREATES AN EXPRESS WARRANTY THAT THE WHOLE OF THE
3 GOODS WILL CONFORM TO THE SAMPLE OR MODEL.

4 (2) IT IS NOT NECESSARY TO THE CREATION OF AN EXPRESS WAR-
5 RANTY THAT THE LESSOR USE FORMAL WORDS, SUCH AS "WARRANT" OR
6 "GUARANTEE", OR THAT THE LESSOR HAVE A SPECIFIC INTENTION TO MAKE
7 A WARRANTY, BUT AN AFFIRMATION MERELY OF THE VALUE OF THE GOODS
8 OR A STATEMENT PURPORTING TO BE MERELY THE LESSOR'S OPINION OR
9 COMMENDATION OF THE GOODS DOES NOT CREATE A WARRANTY.

10 SEC. 2A211. (1) THERE IS IN A LEASE CONTRACT A WARRANTY
11 THAT FOR THE LEASE TERM NO PERSON HOLDS A CLAIM TO OR INTEREST IN
12 THE GOODS THAT AROSE FROM AN ACT OR OMISSION OF THE LESSOR, OTHER
13 THAN A CLAIM BY WAY OF INFRINGEMENT OR THE LIKE, WHICH WILL
14 INTERFERE WITH THE LESSEE'S ENJOYMENT OF ITS LEASEHOLD INTEREST.

15 (2) EXCEPT IN A FINANCE LEASE, THERE IS IN A LEASE CONTRACT
16 BY A LESSOR WHO IS A MERCHANT REGULARLY DEALING IN GOODS OF THE
17 KIND A WARRANTY THAT THE GOODS ARE DELIVERED FREE OF THE RIGHTFUL
18 CLAIM OF ANY PERSON BY WAY OF INFRINGEMENT OR THE LIKE.

19 (3) A LESSEE WHO FURNISHES SPECIFICATIONS TO A LESSOR OR A
20 SUPPLIER SHALL HOLD THE LESSOR AND THE SUPPLIER HARMLESS AGAINST
21 ANY CLAIM BY WAY OF INFRINGEMENT OR THE LIKE THAT ARISES OUT OF
22 COMPLIANCE WITH THE SPECIFICATIONS.

23 SEC. 2A212. (1) EXCEPT IN A FINANCE LEASE, A WARRANTY THAT
24 THE GOODS WILL BE MERCHANTABLE IS IMPLIED IN A LEASE CONTRACT IF
25 THE LESSOR IS A MERCHANT WITH RESPECT TO GOODS OF THAT KIND.

26 (2) GOODS TO BE MERCHANTABLE MUST BE AT LEAST ALL OF THE
27 FOLLOWING:

1 (A) PASS WITHOUT OBJECTION IN THE TRADE UNDER THE
2 DESCRIPTION IN THE LEASE AGREEMENT.

3 (B) IN THE CASE OF FUNGIBLE GOODS, ARE OF FAIR AVERAGE QUAL-
4 ITY WITHIN THE DESCRIPTION.

5 (C) ARE FIT FOR THE ORDINARY PURPOSES FOR WHICH GOODS OF
6 THAT TYPE ARE USED.

7 (D) RUN, WITHIN THE VARIATION PERMITTED BY THE LEASE AGREE-
8 MENT, OF EVEN KIND, QUALITY, AND QUANTITY WITHIN EACH UNIT AND
9 AMONG ALL UNITS INVOLVED.

10 (E) ARE ADEQUATELY CONTAINED, PACKAGED, AND LABELED AS THE
11 LEASE AGREEMENT MAY REQUIRE.

12 (F) CONFORM TO ANY PROMISES OR AFFIRMATIONS OF FACT MADE ON
13 THE CONTAINER OR LABEL.

14 (3) OTHER IMPLIED WARRANTIES MAY ARISE FROM COURSE OF DEAL-
15 ING OR USAGE OF TRADE.

16 SEC. 2A213. EXCEPT IN A FINANCE LEASE, IF THE LESSOR AT THE
17 TIME THE LEASE CONTRACT IS MADE HAS REASON TO KNOW OF ANY PARTIC-
18 ULAR PURPOSE FOR WHICH THE GOODS ARE REQUIRED AND THAT THE LESSEE
19 IS RELYING ON THE LESSOR'S SKILL OR JUDGMENT TO SELECT OR FURNISH
20 SUITABLE GOODS, THERE IS IN THE LEASE CONTRACT AN IMPLIED WAR-
21 RANTY THAT THE GOODS WILL BE FIT FOR THAT PURPOSE.

22 SEC. 2A214. (1) WORDS OR CONDUCT RELEVANT TO THE CREATION
23 OF AN EXPRESS WARRANTY AND WORDS OR CONDUCT TENDING TO NEGATE OR
24 LIMIT A WARRANTY MUST BE CONSTRUED WHEREVER REASONABLE AS CONSIS-
25 TENT WITH EACH OTHER, BUT, SUBJECT TO THE PROVISIONS OF SECTION
26 2A202 ON PAROL OR EXTRINSIC EVIDENCE, NEGATION OR LIMITATION IS
27 INOPERATIVE TO THE EXTENT THAT THE CONSTRUCTION IS UNREASONABLE.

1 (2) SUBJECT TO SUBSECTION (3), TO EXCLUDE OR MODIFY THE
2 IMPLIED WARRANTY OF MERCHANTABILITY OR ANY PART OF IT, THE LAN-
3 GUAGE MUST MENTION "MERCHANTABILITY", BE BY A WRITING, AND BE
4 CONSPICUOUS. SUBJECT TO SUBSECTION (3), TO EXCLUDE OR MODIFY ANY
5 IMPLIED WARRANTY OF FITNESS, THE EXCLUSION MUST BE BY A WRITING
6 AND BE CONSPICUOUS. LANGUAGE TO EXCLUDE ALL IMPLIED WARRANTIES
7 OF FITNESS IS SUFFICIENT IF IT IS IN WRITING, IS CONSPICUOUS, AND
8 STATES, FOR EXAMPLE, "THERE IS NO WARRANTY THAT THE GOODS WILL BE
9 FIT FOR A PARTICULAR PURPOSE".

10 (3) NOTWITHSTANDING SUBSECTION (2), BUT SUBJECT TO SUBSEC-
11 TION (4), ALL OF THE FOLLOWING APPLY:

12 (A) UNLESS THE CIRCUMSTANCES INDICATE OTHERWISE, ALL IMPLIED
13 WARRANTIES ARE EXCLUDED BY EXPRESSIONS LIKE "AS IS", OR "WITH ALL
14 FAULTS", OR BY OTHER LANGUAGE THAT IN COMMON UNDERSTANDING CALLS
15 THE LESSEE'S ATTENTION TO THE EXCLUSION OF WARRANTIES AND MAKES
16 PLAIN THAT THERE IS NO IMPLIED WARRANTY, IF IN WRITING AND
17 CONSPICUOUS.

18 (B) IF THE LESSEE BEFORE ENTERING INTO THE LEASE CONTRACT
19 HAS EXAMINED THE GOODS OR THE SAMPLE OR MODEL AS FULLY AS DESIRED
20 OR HAS REFUSED TO EXAMINE THE GOODS, THERE IS NO IMPLIED WARRANTY
21 WITH REGARD TO DEFECTS THAT AN EXAMINATION OUGHT IN THE CIRCUM-
22 STANCES TO HAVE REVEALED.

23 (C) AN IMPLIED WARRANTY MAY ALSO BE EXCLUDED OR MODIFIED BY
24 COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

25 (4) TO EXCLUDE OR MODIFY A WARRANTY AGAINST INTERFERENCE OR
26 AGAINST INFRINGEMENT (SECTION 2A211) OR ANY PART OF IT, THE
27 LANGUAGE MUST BE SPECIFIC, BE BY A WRITING, AND BE CONSPICUOUS,

1 UNLESS THE CIRCUMSTANCES, INCLUDING COURSE OF PERFORMANCE, COURSE
2 OF DEALING, OR USAGE OF TRADE, GIVE THE LESSEE REASON TO KNOW
3 THAT THE GOODS ARE BEING LEASED SUBJECT TO A CLAIM OR INTEREST OF
4 ANY PERSON.

5 SEC. 2A215. WARRANTIES, WHETHER EXPRESS OR IMPLIED, MUST BE
6 CONSTRUED AS CONSISTENT WITH EACH OTHER AND AS CUMULATIVE, BUT IF
7 THAT CONSTRUCTION IS UNREASONABLE, THE INTENTION OF THE PARTIES
8 DETERMINES WHICH WARRANTY IS DOMINANT. IN ASCERTAINING THAT
9 INTENTION, THE FOLLOWING RULES APPLY:

10 (A) EXACT OR TECHNICAL SPECIFICATIONS DISPLACE AN INCONSIS-
11 TENT SAMPLE OR MODEL OR GENERAL LANGUAGE OF DESCRIPTION.

12 (B) A SAMPLE FROM AN EXISTING BULK DISPLACES INCONSISTENT
13 GENERAL LANGUAGE OF DESCRIPTION.

14 (C) EXPRESS WARRANTIES DISPLACE INCONSISTENT IMPLIED WARRANT-
15 TIES OTHER THAN AN IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR
16 PURPOSE.

17 SEC. 2A216. A WARRANTY TO OR FOR THE BENEFIT OF A LESSEE
18 UNDER THIS ARTICLE, WHETHER EXPRESS OR IMPLIED, EXTENDS TO ANY
19 NATURAL PERSON WHO IS IN THE FAMILY OR HOUSEHOLD OF THE LESSEE OR
20 WHO IS A GUEST IN THE LESSEE'S HOME IF IT IS REASONABLE TO EXPECT
21 THAT SUCH PERSON MAY USE, CONSUME, OR BE AFFECTED BY THE GOODS
22 AND WHO IS INJURED IN PERSON BY BREACH OF THE WARRANTY. THIS
23 SECTION DOES NOT DISPLACE PRINCIPLES OF LAW AND EQUITY THAT
24 EXTEND A WARRANTY TO OR FOR THE BENEFIT OF A LESSEE TO OTHER
25 PERSONS. THE OPERATION OF THIS SECTION MAY NOT BE EXCLUDED, MOD-
26 IFIED, OR LIMITED, BUT AN EXCLUSION, MODIFICATION, OR LIMITATION
27 OF THE WARRANTY, INCLUDING ANY WITH RESPECT TO RIGHTS AND

1 REMEDIES, EFFECTIVE AGAINST THE LESSEE IS ALSO EFFECTIVE AGAINST
2 ANY BENEFICIARY DESIGNATED UNDER THIS SECTION.

3 SEC. 2A217. IDENTIFICATION OF GOODS AS GOODS TO WHICH A
4 LEASE CONTRACT REFERS MAY BE MADE AT ANY TIME AND IN ANY MANNER
5 EXPLICITLY AGREED TO BE THE PARTIES. IN THE ABSENCE OF EXPLICIT
6 AGREEMENT, THE FOLLOWING DETERMINES WHEN IDENTIFICATION OCCURS:

7 (A) WHEN THE LEASE CONTRACT IS MADE IF THE LEASE CONTRACT IS
8 FOR A LEASE OF GOODS THAT ARE EXISTING AND IDENTIFIED.

9 (B) WHEN THE GOODS ARE SHIPPED, MARKED, OR OTHERWISE DESIG-
10 NATED BY THE LESSOR AS GOODS TO WHICH THE LEASE CONTRACT REFERS,
11 IF THE LEASE CONTRACT IS FOR A LEASE OF GOODS THAT ARE NOT EXIST-
12 ING AND IDENTIFIED.

13 (C) WHEN THE YOUNG ARE CONCEIVED, IF THE LEASE CONTRACT IS
14 FOR A LEASE OF UNBORN YOUNG OF ANIMALS.

15 SEC. 2A218. (1) A LESSEE OBTAINS AN INSURABLE INTEREST WHEN
16 EXISTING GOODS ARE IDENTIFIED TO THE LEASE CONTRACT EVEN THOUGH
17 THE GOODS IDENTIFIED ARE NONCONFORMING AND THE LESSEE HAS AN
18 OPTION TO REJECT THEM.

19 (2) IF A LESSEE HAS AN INSURABLE INTEREST ONLY BY REASON OF
20 THE LESSOR'S IDENTIFICATION OF THE GOODS, THE LESSOR, UNTIL
21 DEFAULT OR INSOLVENCY OR NOTIFICATION TO THE LESSEE THAT IDENTI-
22 FICATION IS FINAL, MAY SUBSTITUTE OTHER GOODS FOR THOSE
23 IDENTIFIED.

24 (3) NOTWITHSTANDING A LESSEE'S INSURABLE INTEREST UNDER SUB-
25 SECTIONS (1) AND (2), THE LESSOR RETAINS AN INSURABLE INTEREST
26 UNTIL AN OPTION TO BUY HAS BEEN EXERCISED BY THE LESSEE AND RISK
27 OF LOSS HAS PASSED TO THE LESSEE.

1 (4) NOTHING IN THIS SECTION IMPAIRS ANY INSURABLE INTEREST
2 RECOGNIZED UNDER ANY OTHER STATUTE OR RULE OF LAW.

3 (5) THE PARTIES BY AGREEMENT MAY DETERMINE THAT 1 OR MORE
4 PARTIES HAVE AN OBLIGATION TO OBTAIN AND PAY FOR INSURANCE COVER-
5 ING THE GOODS AND BY AGREEMENT MAY DETERMINE THE BENEFICIARY OF
6 THE PROCEEDS OF THE INSURANCE.

7 SEC. 2A219. (1) EXCEPT IN THE CASE OF A FINANCE LEASE, RISK
8 OF LOSS IS RETAINED BY THE LESSOR AND DOES NOT PASS TO THE
9 LESSEE. IN THE CASE OF A FINANCE LEASE, RISK OF LOSS PASSES TO
10 THE LESSEE.

11 (2) SUBJECT TO THE PROVISIONS OF THIS ARTICLE ON THE EFFECT
12 OF DEFAULT ON RISK OF LOSS (SECTION 2A220), IF RISK OF LOSS IS TO
13 PASS TO THE LESSEE AND THE TIME OF PASSAGE IS NOT STATED, THE
14 FOLLOWING RULES APPLY:

15 (A) IF THE LEASE CONTRACT REQUIRES OR AUTHORIZES THE GOODS
16 TO BE SHIPPED BY CARRIER AND IT DOES NOT REQUIRE DELIVERY AT A
17 PARTICULAR DESTINATION, THE RISK OF LOSS PASSES TO THE LESSEE
18 WHEN THE GOODS ARE DULY DELIVERED TO THE CARRIER, BUT IF IT DOES
19 REQUIRE DELIVERY AT A PARTICULAR DESTINATION AND THE GOODS ARE
20 THERE DULY TENDERED WHILE IN THE POSSESSION OF THE CARRIER, THE
21 RISK OF LOSS PASSES TO THE LESSEE WHEN THE GOODS ARE THERE DULY
22 SO TENDERED AS TO ENABLE THE LESSEE TO TAKE DELIVERY.

23 (B) IF THE GOODS ARE HELD BY A BAILEE TO BE DELIVERED WITH-
24 OUT BEING MOVED, THE RISK OF LOSS PASSES TO THE LESSEE ON
25 ACKNOWLEDGMENT BY THE BAILEE OF THE LESSEE'S RIGHT TO POSSESSION
26 OF THE GOODS.

1 (C) IN ANY CASE NOT WITHIN SUBDIVISION (A) OR (B), THE RISK
2 OF LOSS PASSES TO THE LESSEE ON THE LESSEE'S RECEIPT OF THE GOODS
3 IF THE LESSOR, OR, IN THE CASE OF A FINANCE LEASE, THE SUPPLIER,
4 IS A MERCHANT; OTHERWISE, THE RISK PASSES TO THE LESSEE ON TENDER
5 OF DELIVERY.

6 SEC. 2A220. (1) WHERE RISK OF LOSS IS TO PASS TO THE LESSEE
7 AND THE TIME OF PASSAGE IS NOT STATED, THEN THE FOLLOWING RULES
8 APPLY:

9 (A) IF A TENDER OR DELIVERY OF GOODS SO FAILS TO CONFORM TO
10 THE LEASE CONTRACT AS TO GIVE A RIGHT OF REJECTION, THE RISK OF
11 THEIR LOSS REMAINS WITH THE LESSOR, OR, IN THE CASE OF A FINANCE
12 LEASE, THE SUPPLIER, UNTIL CURE OR ACCEPTANCE.

13 (B) IF THE LESSEE RIGHTFULLY REVOKES ACCEPTANCE, HE OR SHE,
14 TO THE EXTENT OF ANY DEFICIENCY IN HIS OR HER EFFECTIVE INSURANCE
15 COVERAGE, MAY TREAT THE RISK OF LOSS AS HAVING REMAINED WITH THE
16 LESSOR FROM THE BEGINNING.

17 (2) WHETHER OR NOT RISK OF LOSS IS TO PASS TO THE LESSEE, IF
18 THE LESSEE AS TO CONFORMING GOODS ALREADY IDENTIFIED TO A LEASE
19 CONTRACT REPUDIATES OR IS OTHERWISE IN DEFAULT UNDER THE LEASE
20 CONTRACT, THE LESSOR, OR, IN THE CASE OF A FINANCE LEASE, THE
21 SUPPLIER, TO THE EXTENT OF ANY DEFICIENCY IN HIS OR HER EFFECTIVE
22 INSURANCE COVERAGE, MAY TREAT THE RISK OF LOSS AS RESTING ON THE
23 LESSEE FOR A COMMERCIALLY REASONABLE TIME.

24 SEC. 2A221. IF A LEASE CONTRACT REQUIRES GOODS IDENTIFIED
25 WHEN THE LEASE CONTRACT IS MADE, AND THE GOODS SUFFER CASUALTY
26 WITHOUT FAULT OF THE LESSEE, THE LESSOR, OR THE SUPPLIER BEFORE
27 DELIVERY, OR THE GOODS SUFFER CASUALTY BEFORE RISK OF LOSS PASSES

1 TO THE LESSEE PURSUANT TO THE LEASE AGREEMENT OR SECTION 2A219,
2 THEN THE FOLLOWING RULES APPLY:

3 (A) IF THE LOSS IS TOTAL, THE LEASE CONTRACT IS AVOIDED.

4 (B) IF THE LOSS IS PARTIAL OR THE GOODS HAVE SO DETERIORATED
5 AS TO NO LONGER CONFORM TO THE LEASE CONTRACT, THE LESSEE MAY
6 NEVERTHELESS DEMAND INSPECTION AND AT HIS OR HER OPTION EITHER
7 TREAT THE LEASE CONTRACT AS AVOIDED OR, EXCEPT IN A FINANCE LEASE
8 THAT IS NOT A CONSUMER LEASE, ACCEPT THE GOODS WITH DUE ALLOWANCE
9 FROM THE RENT PAYABLE FOR THE BALANCE OF THE LEASE TERM FOR THE
10 DETERIORATION OR THE DEFICIENCY IN QUANTITY BUT WITHOUT FURTHER
11 RIGHT AGAINST THE LESSOR.

12 PART 3. EFFECT OF LEASE CONTRACT

13 SEC. 2A301. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, A
14 LEASE CONTRACT IS EFFECTIVE AND ENFORCEABLE ACCORDING TO ITS
15 TERMS BETWEEN THE PARTIES, AGAINST PURCHASERS OF THE GOODS AND
16 AGAINST CREDITORS OF THE PARTIES.

17 SEC. 2A302. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE,
18 EACH PROVISION OF THIS ARTICLE APPLIES WHETHER THE LESSOR OR A
19 THIRD PARTY HAS TITLE TO THE GOODS, AND WHETHER THE LESSOR, THE
20 LESSEE, OR A THIRD PARTY HAS POSSESSION OF THE GOODS, NOTWITH-
21 STANDING ANY STATUTE OR RULE OF LAW THAT POSSESSION OR THE
22 ABSENCE OF POSSESSION IS FRAUDULENT.

23 SEC. 2A303. (1) AS USED IN THIS SECTION, "CREATION OF A
24 SECURITY INTEREST" INCLUDES THE SALE OF A LEASE CONTRACT THAT IS
25 SUBJECT TO ARTICLE 9, SECURED TRANSACTIONS, BY REASON OF SECTION
26 9102(1)(B).

1 (2) EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (4), A
2 PROVISION IN A LEASE AGREEMENT (i) WHICH PROHIBITS THE VOLUNTARY
3 OR INVOLUNTARY TRANSFER, INCLUDING A TRANSFER BY SALE, SUBLEASE,
4 CREATION, OR ENFORCEMENT OF A SECURITY INTEREST, OR ATTACHMENT,
5 LEVY, OR OTHER JUDICIAL PROCESS, OF AN INTEREST OF A PARTY UNDER
6 THE LEASE CONTRACT OR OF THE LESSOR'S RESIDUAL INTEREST IN THE
7 GOODS, OR (ii) MAKES SUCH A TRANSFER AN EVENT OF DEFAULT, GIVES
8 RISE TO THE RIGHTS AND REMEDIES PROVIDED IN SUBSECTION (5), BUT A
9 TRANSFER THAT IS PROHIBITED OR IS AN EVENT OF DEFAULT UNDER THE
10 LEASE AGREEMENT IS OTHERWISE EFFECTIVE.

11 (3) A PROVISION IN A LEASE AGREEMENT WHICH PROHIBITS THE
12 CREATION OR ENFORCEMENT OF A SECURITY INTEREST IN AN INTEREST OF
13 A PARTY UNDER THE LEASE CONTRACT OR IN THE LESSOR'S RESIDUAL
14 INTEREST IN THE GOODS, OR MAKES SUCH A TRANSFER AN EVENT OF
15 DEFAULT, IS NOT ENFORCEABLE UNLESS, AND THEN ONLY TO THE EXTENT
16 THAT, THERE IS AN ACTUAL TRANSFER BY THE LESSEE OF THE LESSEE'S
17 RIGHT OF POSSESSION OR USE OF THE GOODS IN VIOLATION OF THE PRO-
18 VISION OR AN ACTUAL DELEGATION OF A MATERIAL PERFORMANCE OF
19 EITHER PARTY TO THE LEASE CONTRACT IN VIOLATION OF THE
20 PROVISION. NEITHER THE GRANTING NOR THE ENFORCEMENT OF A SECUR-
21 ITY INTEREST IN (i) THE LESSOR'S INTEREST UNDER THE LEASE CON-
22 TRACT OR (ii) THE LESSOR'S RESIDUAL INTEREST IN THE GOODS IS A
23 TRANSFER THAT MATERIALLY IMPAIRS THE PROSPECT OF OBTAINING RETURN
24 PERFORMANCE BY, MATERIALLY CHANGES THE DUTY OF, OR MATERIALLY
25 INCREASES THE BURDEN OR RISK IMPOSED ON, THE LESSEE WITHIN THE
26 PURVIEW OF SUBSECTION (5) UNLESS, AND THEN ONLY TO THE EXTENT

1 THAT, THERE IS AN ACTUAL DELEGATION OF A MATERIAL PERFORMANCE OF
2 THE LESSOR.

3 (4) A PROVISION IN A LEASE AGREEMENT WHICH (i) PROHIBITS A
4 TRANSFER OF A RIGHT TO DAMAGES FOR DEFAULT WITH RESPECT TO THE
5 WHOLE LEASE CONTRACT OR OF A RIGHT TO PAYMENT ARISING OUT OF THE
6 TRANSFEROR'S DUE PERFORMANCE OF THE TRANSFEROR'S ENTIRE OBLIGA-
7 TION, OR (ii) MAKES SUCH A TRANSFER AN EVENT OF DEFAULT, IS NOT
8 ENFORCEABLE, AND SUCH A TRANSFER IS NOT A TRANSFER THAT MATERI-
9 ALLY IMPAIRS THE PROSPECT OF OBTAINING RETURN PERFORMANCE BY,
10 MATERIALLY CHANGES THE DUTY OF, OR MATERIALLY INCREASES THE
11 BURDEN OR RISK IMPOSED ON, THE OTHER PARTY TO THE LEASE CONTRACT
12 WITHIN THE PURVIEW OF SUBSECTION (5).

13 (5) SUBJECT TO SUBSECTIONS (3) AND (4), THE FOLLOWING RULES
14 APPLY:

15 (A) IF A TRANSFER IS MADE WHICH IS MADE AN EVENT OF DEFAULT
16 UNDER A LEASE AGREEMENT, THE PARTY TO THE LEASE CONTRACT NOT
17 MAKING THE TRANSFER, UNLESS THAT PARTY WAIVES THE DEFAULT OR OTH-
18 ERWISE AGREES, HAS THE RIGHTS AND REMEDIES DESCRIBED IN SECTION
19 2A501(2).

20 (B) IF SUBDIVISION (A) IS NOT APPLICABLE AND IF A TRANSFER
21 IS MADE THAT (i) IS PROHIBITED UNDER A LEASE AGREEMENT OR (ii)
22 MATERIALLY IMPAIRS THE PROSPECT OF OBTAINING RETURN PERFORMANCE
23 BY, MATERIALLY CHANGES THE DUTY OF, OR MATERIALLY INCREASES THE
24 BURDEN OR RISK IMPOSED ON, THE OTHER PARTY TO THE LEASE CONTRACT,
25 UNLESS THE PARTY NOT MAKING THE TRANSFER AGREES AT ANY TIME TO
26 THE TRANSFER IN THE LEASE CONTRACT OR OTHERWISE, THEN, EXCEPT AS
27 LIMITED BY CONTRACT, THE TRANSFEROR IS LIABLE TO THE PARTY NOT

1 MAKING THE TRANSFER FOR DAMAGES CAUSED BY THE TRANSFER TO THE
2 EXTENT THAT THE DAMAGES COULD NOT REASONABLY BE PREVENTED BY THE
3 PARTY NOT MAKING THE TRANSFER AND A COURT HAVING JURISDICTION MAY
4 GRANT OTHER APPROPRIATE RELIEF, INCLUDING CANCELLATION OF THE
5 LEASE CONTRACT OR AN INJUNCTION AGAINST THE TRANSFER.

6 (6) A TRANSFER OF "THE LEASE" OR OF "ALL MY RIGHTS UNDER THE
7 LEASE" OR A TRANSFER IN SIMILAR GENERAL TERMS IS A TRANSFER OF
8 RIGHTS AND, UNLESS THE LANGUAGE OR THE CIRCUMSTANCES, AS IN A
9 TRANSFER FOR SECURITY, INDICATE THE CONTRARY, THE TRANSFER IS A
10 DELEGATION OF DUTIES BY THE TRANSFEROR TO THE TRANSFEREE.

11 ACCEPTANCE BY THE TRANSFEREE CONSTITUTES A PROMISE BY THE TRANS-
12 FEREE TO PERFORM THOSE DUTIES. THE PROMISE IS ENFORCEABLE BY
13 EITHER THE TRANSFEROR OR THE OTHER PARTY TO THE LEASE CONTRACT.

14 (7) UNLESS OTHERWISE AGREED BY THE LESSOR AND THE LESSEE, A
15 DELEGATION OF PERFORMANCE DOES NOT RELIEVE THE TRANSFEROR AS
16 AGAINST THE OTHER PARTY OF ANY DUTY TO PERFORM OR OF ANY LIABIL-
17 ITY FOR DEFAULT.

18 (8) IN A CONSUMER LEASE, TO PROHIBIT THE TRANSFER OF AN
19 INTEREST OF A PARTY UNDER THE LEASE CONTRACT OR TO MAKE A TRANS-
20 FER AN EVENT OF DEFAULT, THE LANGUAGE MUST BE SPECIFIC, BY A
21 WRITING, AND CONSPICUOUS.

22 SEC. 2A304. (1) SUBJECT TO SECTION 2A303, A SUBSEQUENT
23 LESSEE FROM A LESSOR OF GOODS UNDER AN EXISTING LEASE CONTRACT
24 OBTAINS, TO THE EXTENT OF THE LEASEHOLD INTEREST TRANSFERRED, THE
25 LEASEHOLD INTEREST IN THE GOODS THAT THE LESSOR HAD OR HAD POWER
26 TO TRANSFER, AND EXCEPT AS PROVIDED IN SUBSECTION (2) AND SECTION
27 2A527(4), TAKES SUBJECT TO THE EXISTING LEASE CONTRACT. A LESSOR

1 WITH VOIDABLE TITLE HAS POWER TO TRANSFER A GOOD LEASEHOLD
2 INTEREST TO A GOOD FAITH SUBSEQUENT LESSEE FOR VALUE, BUT ONLY TO
3 THE EXTENT SET FORTH IN THE PRECEDING SENTENCE. IF GOODS HAVE
4 BEEN DELIVERED UNDER A TRANSACTION OF PURCHASE, THE LESSOR HAS
5 THAT POWER EVEN THOUGH ANY OF THE FOLLOWING APPLY:

6 (A) THE LESSOR'S TRANSFEROR WAS DECEIVED AS TO THE IDENTITY
7 OF THE LESSOR.

8 (B) THE DELIVERY WAS IN EXCHANGE FOR A CHECK WHICH IS LATER
9 DISHONORED.

10 (C) IT WAS AGREED THAT THE TRANSACTION WAS TO BE A "CASH
11 SALE".

12 (D) THE DELIVERY WAS PROCURED THROUGH FRAUD PUNISHABLE AS
13 LARCENOUS UNDER THE CRIMINAL LAW.

14 (2) A SUBSEQUENT LESSEE IN THE ORDINARY COURSE OF BUSINESS
15 FROM A LESSOR WHO IS A MERCHANT DEALING IN GOODS OF THAT KIND TO
16 WHOM THE GOODS WERE ENTRUSTED BY THE EXISTING LESSEE OF THAT
17 LESSOR BEFORE THE INTEREST OF THE SUBSEQUENT LESSEE BECAME
18 ENFORCEABLE AGAINST THAT LESSOR OBTAINS, TO THE EXTENT OF THE
19 LEASEHOLD INTEREST TRANSFERRED, ALL OF THAT LESSOR'S AND THE
20 EXISTING LESSEE'S RIGHTS TO THE GOODS, AND TAKES FREE OF THE
21 EXISTING LEASE CONTRACT.

22 (3) A SUBSEQUENT LESSEE FROM THE LESSOR OF GOODS THAT ARE
23 SUBJECT TO AN EXISTING LEASE CONTRACT AND ARE COVERED BY A CER-
24 TIFICATE OF TITLE ISSUED UNDER A STATUTE OF THIS STATE OR OF
25 ANOTHER JURISDICTION TAKES NO GREATER RIGHTS THAN THOSE PROVIDED
26 BOTH BY THIS SECTION AND BY THE CERTIFICATE OF TITLE STATUTE.

1 SEC. 2A305. (1) SUBJECT TO SECTION 2A303, A BUYER OR
2 SUBLESSEE FROM THE LESSEE OF GOODS UNDER AN EXISTING LEASE
3 CONTRACT OBTAINS, TO THE EXTENT OF THE INTEREST TRANSFERRED, THE
4 LEASEHOLD INTEREST IN THE GOODS THAT THE LESSEE HAD OR HAD POWER
5 TO TRANSFER, AND EXCEPT AS PROVIDED IN SUBSECTION (2) AND SECTION
6 2A511(4), TAKES SUBJECT TO THE EXISTING LEASE CONTRACT. A LESSEE
7 WITH A VOIDABLE LEASEHOLD INTEREST HAS POWER TO TRANSFER A GOOD
8 LEASEHOLD INTEREST TO A GOOD FAITH BUYER FOR VALUE OR A GOOD
9 FAITH SUBLESSEE FOR VALUE, BUT ONLY TO THE EXTENT SET FORTH IN
10 THE PRECEDING SENTENCE. WHEN GOODS HAVE BEEN DELIVERED UNDER A
11 TRANSACTION OF LEASE, THE LESSEE HAS THAT POWER EVEN THOUGH ANY
12 OF THE FOLLOWING APPLY:

13 (A) THE LESSOR WAS DECEIVED AS TO THE IDENTITY OF THE
14 LESSEE.

15 (B) THE DELIVERY WAS IN EXCHANGE FOR A CHECK WHICH IS LATER
16 DISHONORED.

17 (C) THE DELIVERY WAS PROCURED THROUGH FRAUD PUNISHABLE AS
18 LARCENOUS UNDER THE CRIMINAL LAW.

19 (2) A BUYER IN THE ORDINARY COURSE OF BUSINESS OR A SUBLES-
20 SEE IN THE ORDINARY COURSE OF BUSINESS FROM A LESSEE WHO IS A
21 MERCHANT DEALING IN GOODS OF THAT KIND TO WHOM THE GOODS WERE
22 ENTRUSTED BY THE LESSOR OBTAINS, TO THE EXTENT OF THE INTEREST
23 TRANSFERRED, ALL OF THE LESSOR'S AND LESSEE'S RIGHTS TO THE
24 GOODS, AND TAKES FREE OF THE EXISTING LEASE CONTRACT.

25 (3) A BUYER OR SUBLESSEE FROM THE LESSEE OF GOODS THAT ARE
26 SUBJECT TO AN EXISTING LEASE CONTRACT AND ARE COVERED BY A
27 CERTIFICATE OF TITLE ISSUED UNDER A STATUTE OF THIS STATE OR OF

1 ANOTHER JURISDICTION TAKES NO GREATER RIGHTS THAN THOSE PROVIDED
2 BOTH BY THIS SECTION AND BY THE CERTIFICATE OF TITLE STATUTE.

3 SEC. 2A306. IF A PERSON IN THE ORDINARY COURSE OF HIS OR
4 HER BUSINESS FURNISHES SERVICES OR MATERIALS WITH RESPECT TO
5 GOODS SUBJECT TO A LEASE CONTRACT, A LIEN UPON THOSE GOODS IN THE
6 POSSESSION OF THAT PERSON GIVEN BY STATUTE OR RULE OF LAW FOR
7 THOSE MATERIALS OR SERVICES TAKES PRIORITY OVER ANY INTEREST OF
8 THE LESSOR OR LESSEE UNDER THE LEASE CONTRACT OR THIS ARTICLE
9 UNLESS THE LIEN IS CREATED BY STATUTE AND THE STATUTE PROVIDES
10 OTHERWISE OR UNLESS THE LIEN IS CREATED BY RULE OF LAW AND THE
11 RULE OF LAW PROVIDES OTHERWISE.

12 SEC. 2A307. (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION
13 2A306, A CREDITOR OF A LESSEE TAKES SUBJECT TO THE LEASE
14 CONTRACT.

15 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (3) AND (4)
16 AND IN SECTIONS 2A306 AND 2A308, A CREDITOR OF A LESSOR TAKES
17 SUBJECT TO THE LEASE CONTRACT EXCEPT AS FOLLOWS:

18 (A) THE CREDITOR HOLDS A LIEN THAT ATTACHED TO THE GOODS
19 BEFORE THE LEASE CONTRACT BECAME ENFORCEABLE.

20 (B) THE CREDITOR HOLDS A SECURITY INTEREST IN THE GOODS AND
21 THE LESSEE DID NOT GIVE VALUE AND RECEIVE DELIVERY OF THE GOODS
22 WITHOUT KNOWLEDGE OF THE SECURITY INTEREST.

23 (C) THE CREDITOR HOLDS A SECURITY INTEREST IN THE GOODS
24 WHICH WAS PERFECTED (SECTION 9303) BEFORE THE LEASE CONTRACT
25 BECAME ENFORCEABLE.

26 (3) A LESSEE IN THE ORDINARY COURSE OF BUSINESS TAKES THE
27 LEASEHOLD INTEREST FREE OF A SECURITY INTEREST IN THE GOODS

1 CREATED BY THE LESSOR EVEN THOUGH THE SECURITY INTEREST IS
2 PERFECTED (SECTION 9303) AND THE LESSEE KNOWS OF ITS EXISTENCE.

3 (4) A LESSEE OTHER THAN A LESSEE IN THE ORDINARY COURSE OF
4 BUSINESS TAKES THE LEASEHOLD INTEREST FREE OF A SECURITY INTEREST
5 TO THE EXTENT THAT IT SECURES FUTURE ADVANCES MADE AFTER THE
6 SECURED PARTY ACQUIRES KNOWLEDGE OF THE LEASE OR MORE THAN 45
7 DAYS AFTER THE LEASE CONTRACT BECOMES ENFORCEABLE, WHICHEVER
8 FIRST OCCURS, UNLESS THE FUTURE ADVANCES ARE MADE PURSUANT TO A
9 COMMITMENT ENTERED INTO WITHOUT KNOWLEDGE OF THE LEASE AND BEFORE
10 THE EXPIRATION OF THE 45-DAY PERIOD.

11 SEC. 2A308. (1) A CREDITOR OF A LESSOR IN POSSESSION OF
12 GOODS SUBJECT TO A LEASE CONTRACT MAY TREAT THE LEASE CONTRACT AS
13 VOID IF AS AGAINST THE CREDITOR RETENTION OF POSSESSION BY THE
14 LESSOR IS FRAUDULENT UNDER ANY STATUTE OR RULE OF LAW, BUT RETEN-
15 TION OF POSSESSION IN GOOD FAITH AND CURRENT COURSE OF TRADE BY
16 THE LESSOR FOR A COMMERCIALLY REASONABLE TIME AFTER THE LEASE
17 CONTRACT BECOMES ENFORCEABLE IS NOT FRAUDULENT.

18 (2) NOTHING IN THIS ARTICLE IMPAIRS THE RIGHTS OF CREDITORS
19 OF A LESSOR IF THE LEASE CONTRACT (i) BECOMES ENFORCEABLE, NOT IN
20 CURRENT COURSE OF TRADE BUT IN SATISFACTION OF OR AS SECURITY FOR
21 A PREEXISTING CLAIM FOR MONEY, SECURITY, OR THE LIKE, AND (ii) IS
22 MADE UNDER CIRCUMSTANCES WHICH UNDER ANY STATUTE OR RULE OF LAW
23 APART FROM THIS ARTICLE WOULD CONSTITUTE THE TRANSACTION A FRAUD-
24 ULENT TRANSFER OR VOIDABLE PREFERENCE.

25 (3) A CREDITOR OF A SELLER MAY TREAT A SALE OR AN IDENTIFI-
26 CATION OF GOODS TO A CONTRACT FOR SALE AS VOID IF AS AGAINST THE
27 CREDITOR RETENTION OF POSSESSION BY THE SELLER IS FRAUDULENT

1 UNDER ANY STATUTE OR RULE OF LAW, BUT RETENTION OF POSSESSION OF
2 THE GOODS PURSUANT TO A LEASE CONTRACT ENTERED INTO BY THE SELLER
3 AS LESSEE AND THE BUYER AS LESSOR IN CONNECTION WITH THE SALE OR
4 IDENTIFICATION OF THE GOODS IS NOT FRAUDULENT IF THE BUYER BOUGHT
5 FOR VALUE AND IN GOOD FAITH.

6 SEC. 2A309. (1) AS USED IN THIS SECTION:

7 (A) "GOODS" ARE "FIXTURES" WHEN THEY BECOME SO RELATED TO
8 PARTICULAR REAL ESTATE THAT AN INTEREST IN THEM ARISES UNDER REAL
9 ESTATE LAW.

10 (B) A "FIXTURE FILING" IS THE FILING, IN THE OFFICE WHERE A
11 MORTGAGE ON THE REAL ESTATE WOULD BE FILED OR RECORDED OR OF A
12 FINANCING STATEMENT COVERING GOODS THAT ARE OR ARE TO BECOME FIX-
13 TURES AND CONFORMING TO THE REQUIREMENTS OF SECTION 9402(5).

14 (C) A "LEASE" IS A "PURCHASE MONEY LEASE" UNLESS THE LESSEE
15 HAS POSSESSION OR USE OF THE GOODS OR THE RIGHT TO POSSESSION OR
16 USE OF THE GOODS BEFORE THE LEASE AGREEMENT IS ENFORCEABLE.

17 (D) A "MORTGAGE" IS A "CONSTRUCTION MORTGAGE" TO THE EXTENT
18 IT SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN
19 IMPROVEMENT ON LAND INCLUDING THE ACQUISITION COST OF THE LAND,
20 IF THE RECORDED WRITING SO INDICATES.

21 (E) "ENCUMBRANCE" INCLUDES REAL ESTATE MORTGAGES AND OTHER
22 LIENS ON REAL ESTATE AND ALL OTHER RIGHTS IN REAL ESTATE THAT ARE
23 NOT OWNERSHIP INTERESTS.

24 (2) UNDER THIS ARTICLE A LEASE MAY BE OF GOODS THAT ARE FIX-
25 TURES OR MAY CONTINUE IN GOODS THAT BECOME FIXTURES, BUT NO LEASE
26 EXISTS UNDER THIS ARTICLE OF ORDINARY BUILDING MATERIALS
27 INCORPORATED INTO AN IMPROVEMENT ON LAND.

1 (3) THIS ARTICLE DOES NOT PREVENT CREATION OF A LEASE OF
2 FIXTURES PURSUANT TO REAL ESTATE LAW.

3 (4) THE PERFECTED INTEREST OF A LESSOR OF FIXTURES HAS PRI-
4 ORITY OVER A CONFLICTING INTEREST OF AN ENCUMBRANCER OR OWNER OF
5 THE REAL ESTATE IF EITHER OF THE FOLLOWING APPLIES:

6 (A) THE LEASE IS A PURCHASE MONEY LEASE, THE CONFLICTING
7 INTEREST OF THE ENCUMBRANCER OR OWNER ARISES BEFORE THE GOODS
8 BECOME FIXTURES, THE INTEREST OF THE LESSOR IS PERFECTED BY A
9 FIXTURE FILING BEFORE THE GOODS BECOME FIXTURES OR WITHIN 10 DAYS
10 THEREAFTER, AND THE LESSEE HAS AN INTEREST OF RECORD IN THE REAL
11 ESTATE OR IS IN POSSESSION OF THE REAL ESTATE.

12 (B) THE INTEREST OF THE LESSOR IS PERFECTED BY A FIXTURE
13 FILING BEFORE THE INTEREST OF THE ENCUMBRANCER OR OWNER IS OF
14 RECORD, THE LESSOR'S INTEREST HAS PRIORITY OVER ANY CONFLICTING
15 INTEREST OF A PREDECESSOR IN TITLE OF THE ENCUMBRANCER OR OWNER,
16 AND THE LESSEE HAS AN INTEREST OF RECORD IN THE REAL ESTATE OR IS
17 IN POSSESSION OF THE REAL ESTATE.

18 (5) THE INTEREST OF A LESSOR OF FIXTURES, WHETHER OR NOT
19 PERFECTED, HAS PRIORITY OVER THE CONFLICTING INTEREST OF AN
20 ENCUMBRANCER OR OWNER OF THE REAL ESTATE IF ANY OF THE FOLLOWING
21 APPLY:

22 (A) THE FIXTURES ARE READILY REMOVABLE FACTORY OR OFFICE
23 MACHINES, READILY REMOVABLE EQUIPMENT THAT IS NOT PRIMARILY USED
24 OR LEASED FOR USE IN THE OPERATION OF THE REAL ESTATE, OR READILY
25 REMOVABLE REPLACEMENTS OF DOMESTIC APPLIANCES THAT ARE GOODS
26 SUBJECT TO A CONSUMER LEASE, AND BEFORE THE GOODS BECOME
27 FIXTURES, THE LEASE CONTRACT IS ENFORCEABLE.

1 (B) THE CONFLICTING INTEREST IS A LIEN ON THE REAL ESTATE
2 OBTAINED BY LEGAL OR EQUITABLE PROCEEDINGS AFTER THE LEASE CON-
3 TRACT IS ENFORCEABLE.

4 (C) THE ENCUMBRANCER OR OWNER HAS CONSENTED IN WRITING TO
5 THE LEASE OR HAS DISCLAIMED AN INTEREST IN THE GOODS AS
6 FIXTURES.

7 (D) THE LESSEE HAS A RIGHT TO REMOVE THE GOODS AS AGAINST
8 THE ENCUMBRANCER OR OWNER. IF THE LESSEE'S RIGHT TO REMOVE TER-
9 MINATES, THE PRIORITY OF THE INTEREST OF THE LESSOR CONTINUES FOR
10 A REASONABLE TIME.

11 (6) NOTWITHSTANDING SUBSECTION (4)(A) BUT OTHERWISE SUBJECT
12 TO SUBSECTIONS (4) AND (5), THE INTEREST OF A LESSOR OF FIXTURES,
13 INCLUDING THE LESSOR'S RESIDUAL INTEREST, IS SUBORDINATE TO THE
14 CONFLICTING INTEREST OF AN ENCUMBRANCER OF THE REAL ESTATE UNDER
15 A CONSTRUCTION MORTGAGE RECORDED BEFORE THE GOODS BECOME FIXTURES
16 IF THE GOODS BECOME FIXTURES BEFORE THE COMPLETION OF THE
17 CONSTRUCTION. TO THE EXTENT GIVEN TO REFINANCE A CONSTRUCTION
18 MORTGAGE, THE CONFLICTING INTEREST OF AN ENCUMBRANCER OF THE REAL
19 ESTATE UNDER A MORTGAGE HAS THIS PRIORITY TO THE SAME EXTENT AS
20 THE ENCUMBRANCER OF THE REAL ESTATE UNDER THE CONSTRUCTION
21 MORTGAGE.

22 (7) IN CASES NOT WITHIN THE PRECEDING SUBSECTIONS, PRIORITY
23 BETWEEN THE INTEREST OF A LESSOR OF FIXTURES, INCLUDING THE
24 LESSOR'S RESIDUAL INTEREST, AND THE CONFLICTING INTEREST OF AN
25 ENCUMBRANCER OR OWNER OF THE REAL ESTATE WHO IS NOT THE LESSEE IS
26 DETERMINED BY THE PRIORITY RULES GOVERNING CONFLICTING INTERESTS
27 IN REAL ESTATE.

1 (8) IF THE INTEREST OF A LESSOR OF FIXTURES, INCLUDING THE
2 LESSOR'S RESIDUAL INTEREST, HAS PRIORITY OVER ALL CONFLICTING
3 INTERESTS OF ALL OWNERS AND ENCUMBRANCERS OF THE REAL ESTATE, THE
4 LESSOR OR THE LESSEE MAY (i) ON DEFAULT, EXPIRATION, TERMINATION,
5 OR CANCELLATION OF THE LEASE AGREEMENT BUT SUBJECT TO THE LEASE
6 AGREEMENT AND THIS ARTICLE, OR (ii) IF NECESSARY TO ENFORCE OTHER
7 RIGHTS AND REMEDIES OF THE LESSOR OR LESSEE UNDER THIS ARTICLE,
8 REMOVE THE GOODS FROM THE REAL ESTATE, FREE AND CLEAR OF ALL CON-
9 FFLICTING INTERESTS OF ALL OWNERS AND ENCUMBRANCERS OF THE REAL
10 ESTATE, BUT THE LESSOR OR LESSEE MUST REIMBURSE ANY ENCUMBRANCER
11 OR OWNER OF THE REAL ESTATE WHO IS NOT THE LESSEE AND WHO HAS NOT
12 OTHERWISE AGREED FOR THE COST OF REPAIR OF ANY PHYSICAL INJURY,
13 BUT NOT FOR ANY DIMINUTION IN VALUE OF THE REAL ESTATE CAUSED BY
14 THE ABSENCE OF THE GOODS REMOVED OR BY ANY NECESSITY OF REPLACING
15 THEM. A PERSON ENTITLED TO REIMBURSEMENT MAY REFUSE PERMISSION
16 TO REMOVE UNTIL THE PARTY SEEKING REMOVAL GIVES ADEQUATE SECURITY
17 FOR THE PERFORMANCE OF THIS OBLIGATION.

18 (9) EVEN THOUGH THE LEASE AGREEMENT DOES NOT CREATE A SECUR-
19 ITY INTEREST, THE INTEREST OF A LESSOR OF FIXTURES, INCLUDING THE
20 LESSOR'S RESIDUAL INTEREST, IS PERFECTED BY FILING A FINANCING
21 STATEMENT AS A FIXTURE FILING FOR LEASED GOODS THAT ARE OR ARE TO
22 BECOME FIXTURES IN ACCORDANCE WITH THE RELEVANT PROVISIONS OF
23 ARTICLE 9.

24 SEC. 2A310. (1) GOODS ARE ACCESSIONS WHEN THEY ARE
25 INSTALLED IN OR AFFIXED TO OTHER GOODS.

26 (2) THE INTEREST OF A LESSOR OR A LESSEE UNDER A LEASE
27 CONTRACT ENTERED INTO BEFORE THE GOODS BECAME ACCESSIONS IS

1 SUPERIOR TO ALL INTERESTS IN THE WHOLE EXCEPT AS STATED IN
2 SUBSECTION (4).

3 (3) THE INTEREST OF A LESSOR OR A LESSEE UNDER A LEASE CON-
4 TRACT ENTERED INTO AT THE TIME OR AFTER THE GOODS BECAME ACCES-
5 SIONS IS SUPERIOR TO ALL SUBSEQUENTLY ACQUIRED INTERESTS IN THE
6 WHOLE EXCEPT AS STATED IN SUBSECTION (4) BUT IS SUBORDINATE TO
7 INTERESTS IN THE WHOLE EXISTING AT THE TIME THE LEASE CONTRACT
8 WAS MADE UNLESS THE HOLDERS OF SUCH INTERESTS IN THE WHOLE HAVE
9 IN WRITING CONSENTED TO THE LEASE OR DISCLAIMED AN INTEREST IN
10 THE GOODS AS PART OF THE WHOLE.

11 (4) THE INTEREST OF A LESSOR OR A LESSEE UNDER A LEASE CON-
12 TRACT DESCRIBED IN SUBSECTION (2) OR (3) IS SUBORDINATE TO THE
13 INTEREST OF EITHER OF THE FOLLOWING:

14 (A) A BUYER IN THE ORDINARY COURSE OF BUSINESS OR A LESSEE
15 IN THE ORDINARY COURSE OF BUSINESS OF ANY INTEREST IN THE WHOLE
16 ACQUIRED AFTER THE GOODS BECAME ACCESSIONS.

17 (B) A CREDITOR WITH A SECURITY INTEREST IN THE WHOLE PERFEC-
18 TED BEFORE THE LEASE CONTRACT WAS MADE TO THE EXTENT THAT THE
19 CREDITOR MAKES SUBSEQUENT ADVANCES WITHOUT KNOWLEDGE OF THE LEASE
20 CONTRACT.

21 (5) WHEN UNDER SUBSECTIONS (2) OR (3) AND (4) A LESSOR OR A
22 LESSEE OF ACCESSIONS HOLDS AN INTEREST THAT IS SUPERIOR TO ALL
23 INTERESTS IN THE WHOLE, THE LESSOR OR THE LESSEE MAY (i) ON
24 DEFAULT, EXPIRATION, TERMINATION, OR CANCELLATION OF THE LEASE
25 CONTRACT BY THE OTHER PARTY BUT SUBJECT TO THE PROVISIONS OF THE
26 LEASE CONTRACT AND THIS ARTICLE, OR (ii) IF NECESSARY TO ENFORCE
27 HIS OR HER OTHER RIGHTS AND REMEDIES UNDER THIS ARTICLE, REMOVE

1 THE GOODS FROM THE WHOLE, FREE AND CLEAR OF ALL INTERESTS IN THE
2 WHOLE, BUT HE OR SHE MUST REIMBURSE ANY HOLDER OF AN INTEREST IN
3 THE WHOLE WHO IS NOT THE LESSEE AND WHO HAS NOT OTHERWISE AGREED
4 FOR THE COST OF REPAIR OF ANY PHYSICAL INJURY BUT NOT FOR ANY
5 DIMINUTION IN VALUE OF THE WHOLE CAUSED BY THE ABSENCE OF THE
6 GOODS REMOVED OR BY ANY NECESSITY FOR REPLACING THEM. A PERSON
7 ENTITLED TO REIMBURSEMENT MAY REFUSE PERMISSION TO REMOVE UNTIL
8 THE PARTY SEEKING REMOVAL GIVES ADEQUATE SECURITY FOR THE PER-
9 FORMANCE OF THIS OBLIGATION.

10 SEC. 2A311. NOTHING IN THIS ARTICLE PREVENTS SUBORDINATION
11 BY AGREEMENT BY ANY PERSON ENTITLED TO PRIORITY.

12 PART 4. PERFORMANCE OF LEASE CONTRACT:

13 REPUDIATED, SUBSTITUTED, AND EXCUSED

14 SEC. 2A401. (1) A LEASE CONTRACT IMPOSES AN OBLIGATION ON
15 EACH PARTY THAT THE OTHER'S EXPECTATION OF RECEIVING DUE PER-
16 FORMANCE WILL NOT BE IMPAIRED.

17 (2) IF REASONABLE GROUNDS FOR INSECURITY ARISE WITH RESPECT
18 TO THE PERFORMANCE OF EITHER PARTY, THE INSECURE PARTY MAY DEMAND
19 IN WRITING ADEQUATE ASSURANCE OF DUE PERFORMANCE. UNTIL THE
20 INSECURE PARTY RECEIVES THAT ASSURANCE, IF COMMERCIALY REASON-
21 ABLE THE INSECURE PARTY MAY SUSPEND ANY PERFORMANCE FOR WHICH HE
22 OR SHE HAS NOT ALREADY RECEIVED THE AGREED RETURN.

23 (3) A REPUDIATION OF THE LEASE CONTRACT OCCURS IF ASSURANCE
24 OF DUE PERFORMANCE ADEQUATE UNDER THE CIRCUMSTANCES OF THE PAR-
25 TICULAR CASE IS NOT PROVIDED TO THE INSECURE PARTY WITHIN A REA-
26 SONABLE TIME, NOT TO EXCEED 30 DAYS AFTER RECEIPT OF A DEMAND BY
27 THE OTHER PARTY.

1 (4) BETWEEN MERCHANTS, THE REASONABLENESS OF GROUNDS FOR
2 INSECURITY AND THE ADEQUACY OF ANY ASSURANCE OFFERED MUST BE
3 DETERMINED ACCORDING TO COMMERCIAL STANDARDS.

4 (5) ACCEPTANCE OF ANY NONCONFORMING DELIVERY OR PAYMENT DOES
5 NOT PREJUDICE THE AGGRIEVED PARTY'S RIGHT TO DEMAND ADEQUATE
6 ASSURANCE OF FUTURE PERFORMANCE.

7 SEC. 2A402. IF EITHER PARTY REPUDIATES A LEASE CONTRACT
8 WITH RESPECT TO A PERFORMANCE NOT YET DUE UNDER THE LEASE CON-
9 TRACT, THE LOSS OF WHICH PERFORMANCE WILL SUBSTANTIALLY IMPAIR
10 THE VALUE OF THE LEASE CONTRACT TO THE OTHER, THE AGGRIEVED PARTY
11 MAY DO ANY OF THE FOLLOWING:

12 (A) FOR A COMMERCIALLY REASONABLE TIME, AWAIT RETRACTION OF
13 REPUDIATION AND PERFORMANCE BY THE REPUDIATING PARTY.

14 (B) MAKE DEMAND PURSUANT TO SECTION 2A401 AND AWAIT ASSUR-
15 ANCE OF FUTURE PERFORMANCE ADEQUATE UNDER THE CIRCUMSTANCES OF
16 THE PARTICULAR CASE.

17 (C) RESORT TO ANY RIGHT OR REMEDY UPON DEFAULT UNDER THE
18 LEASE CONTRACT OR THIS ARTICLE, EVEN THOUGH THE AGGRIEVED PARTY
19 HAS NOTIFIED THE REPUDIATING PARTY THAT THE AGGRIEVED PARTY WOULD
20 AWAIT THE REPUDIATING PARTY'S PERFORMANCE AND ASSURANCE AND HAS
21 URGED RETRACTION. IN ADDITION, WHETHER OR NOT THE AGGRIEVED
22 PARTY IS PURSUING 1 OF THE FOREGOING REMEDIES, THE AGGRIEVED
23 PARTY MAY SUSPEND PERFORMANCE OR, IF THE AGGRIEVED PARTY IS THE
24 LESSOR, PROCEED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE
25 ON THE LESSOR'S RIGHT TO IDENTIFY GOODS TO THE LEASE CONTRACT
26 NOTWITHSTANDING DEFAULT OR TO SALVAGE UNFINISHED GOODS (SECTION
27 2A524).

1 SEC. 2A403. (1) UNTIL THE REPUDIATING PARTY'S NEXT
2 PERFORMANCE IS DUE, THE REPUDIATING PARTY CAN RETRACT THE REPUDI-
3 ATION UNLESS, SINCE THE REPUDIATION, THE AGGRIEVED PARTY HAS
4 CANCELED THE LEASE CONTRACT OR MATERIALLY CHANGED THE AGGRIEVED
5 PARTY'S POSITION OR OTHERWISE INDICATED THAT THE AGGRIEVED PARTY
6 CONSIDERS THE REPUDIATION FINAL.

7 (2) RETRACTION MAY BE BY ANY METHOD THAT CLEARLY INDICATES
8 TO THE AGGRIEVED PARTY THAT THE REPUDIATING PARTY INTENDS TO PER-
9 FORM UNDER THE LEASE CONTRACT AND INCLUDES ANY ASSURANCE DEMANDED
10 UNDER SECTION 2A401.

11 (3) RETRACTION REINSTATES A REPUDIATING PARTY'S RIGHTS UNDER
12 A LEASE CONTRACT WITH DUE EXCUSE AND ALLOWANCE TO THE AGGRIEVED
13 PARTY FOR ANY DELAY OCCASIONED BY THE REPUDIATION.

14 SEC. 2A404. (1) IF WITHOUT FAULT OF THE LESSEE, THE LESSOR
15 AND THE SUPPLIER, THE AGREED BERTHING, LOADING, OR UNLOADING
16 FACILITIES FAIL OR THE AGREED TYPE OF CARRIER BECOMES UNAVAILABLE
17 OR THE AGREED MANNER OF DELIVERY OTHERWISE BECOMES COMMERCIALY
18 IMPRACTICABLE, BUT A COMMERCIALY REASONABLE SUBSTITUTE IS AVAIL-
19 ABLE, THE SUBSTITUTE PERFORMANCE MUST BE TENDERED AND ACCEPTED.

20 (2) IF THE AGREED MEANS OR MANNER OF PAYMENT FAILS BECAUSE
21 OF DOMESTIC OR FOREIGN GOVERNMENTAL REGULATION, THEN THE FOLLOW-
22 ING APPLY:

23 (A) THE LESSOR MAY WITHHOLD OR STOP DELIVERY OR CAUSE THE
24 SUPPLIER TO WITHHOLD OR STOP DELIVERY UNLESS THE LESSEE PROVIDES
25 A MEANS OR MANNER OF PAYMENT THAT IS COMMERCIALY A SUBSTANTIAL
26 EQUIVALENT.

1 (B) IF DELIVERY HAS ALREADY BEEN TAKEN, PAYMENT BY THE MEANS
2 OR IN THE MANNER PROVIDED BY THE REGULATION DISCHARGES THE
3 LESSEE'S OBLIGATION UNLESS THE REGULATION IS DISCRIMINATORY,
4 OPPRESSIVE, OR PREDATORY.

5 SEC. 2A405. SUBJECT TO SECTION 2A404 ON SUBSTITUTED PER-
6 FORMANCE, THE FOLLOWING RULES APPLY:

7 (A) DELAY IN DELIVERY OR NONDELIVERY IN WHOLE OR IN PART BY
8 A LESSOR OR A SUPPLIER WHO COMPLIES WITH SUBDIVISIONS (B) AND (C)
9 IS NOT A DEFAULT UNDER THE LEASE CONTRACT IF PERFORMANCE AS
10 AGREED HAS BEEN MADE IMPRACTICABLE BY THE OCCURRENCE OF A CONTIN-
11 GENCY THE NONOCCURRENCE OF WHICH WAS A BASIC ASSUMPTION ON WHICH
12 THE LEASE CONTRACT WAS MADE OR BY COMPLIANCE IN GOOD FAITH WITH
13 ANY APPLICABLE FOREIGN OR DOMESTIC GOVERNMENTAL REGULATION OR
14 ORDER, WHETHER OR NOT THE REGULATION OR ORDER LATER PROVES TO BE
15 INVALID.

16 (B) IF THE CAUSES MENTIONED IN SUBDIVISION (A) AFFECT ONLY
17 PART OF THE LESSOR'S OR THE SUPPLIER'S CAPACITY TO PERFORM, HE OR
18 SHE SHALL ALLOCATE PRODUCTION AND DELIVERIES AMONG HIS OR HER
19 CUSTOMERS BUT AT HIS OR HER OPTION MAY INCLUDE REGULAR CUSTOMERS
20 NOT THEN UNDER CONTRACT FOR SALE OR LEASE AS WELL AS HIS OR HER
21 OWN REQUIREMENTS FOR FURTHER MANUFACTURE. HE OR SHE MAY SO ALLO-
22 CATE IN ANY MANNER THAT IS FAIR AND REASONABLE.

23 (C) THE LESSOR SEASONABLY SHALL NOTIFY THE LESSEE AND IN THE
24 CASE OF A FINANCE LEASE THE SUPPLIER SEASONABLY SHALL NOTIFY THE
25 LESSOR AND THE LESSEE, IF KNOWN, THAT THERE WILL BE DELAY OR NON-
26 DELIVERY AND, IF ALLOCATION IS REQUIRED UNDER SUBDIVISION (B), OF
27 THE ESTIMATED QUOTA THUS MADE AVAILABLE FOR THE LESSEE.

1 SEC. 2A406. (1) IF THE LESSEE RECEIVES NOTIFICATION OF A
2 MATERIAL OR INDEFINITE DELAY OR AN ALLOCATION JUSTIFIED UNDER
3 SECTION 2A405, THE LESSEE MAY BY WRITTEN NOTIFICATION TO THE
4 LESSOR AS TO ANY GOODS INVOLVED, AND WITH RESPECT TO ALL OF THE
5 GOODS IF UNDER AN INSTALLMENT LEASE CONTRACT THE VALUE OF THE
6 WHOLE LEASE CONTRACT IS SUBSTANTIALLY IMPAIRED (SECTION 2A510)
7 MAY DO EITHER OF THE FOLLOWING:

8 (A) TERMINATE THE LEASE CONTRACT (SECTION 2A505(2)).

9 (B) EXCEPT IN A FINANCE LEASE THAT IS NOT A CONSUMER LEASE,
10 MODIFY THE LEASE CONTRACT BY ACCEPTING THE AVAILABLE QUOTA IN
11 SUBSTITUTION, WITH DUE ALLOWANCE FROM THE RENT PAYABLE FOR THE
12 BALANCE OF THE LEASE TERM FOR THE DEFICIENCY BUT WITHOUT FURTHER
13 RIGHT AGAINST THE LESSOR.

14 (2) IF, AFTER RECEIPT OF A NOTIFICATION FROM THE LESSOR
15 UNDER SECTION 2A405, THE LESSEE FAILS SO TO MODIFY THE LEASE
16 AGREEMENT WITHIN A REASONABLE TIME NOT EXCEEDING 30 DAYS, THE
17 LEASE CONTRACT LAPSES WITH RESPECT TO ANY DELIVERIES AFFECTED.

18 SEC. 2A407. (1) IN THE CASE OF A FINANCE LEASE THAT IS NOT
19 A CONSUMER LEASE, THE LESSEE'S PROMISES UNDER THE LEASE CONTRACT
20 BECOME IRREVOCABLE AND INDEPENDENT UPON THE LESSEE'S ACCEPTANCE
21 OF THE GOODS.

22 (2) A PROMISE THAT HAS BECOME IRREVOCABLE AND INDEPENDENT
23 UNDER SUBSECTION (1) IS (i) EFFECTIVE AND ENFORCEABLE BETWEEN THE
24 PARTIES, AND BY OR AGAINST THIRD PARTIES INCLUDING ASSIGNEES OF
25 THE PARTIES, AND (ii) NOT SUBJECT TO CANCELLATION, TERMINATION,
26 MODIFICATION, REPUDIATION, EXCUSE, OR SUBSTITUTION WITHOUT THE
27 CONSENT OF THE PARTY TO WHOM THE PROMISE RUNS.

1 (3) THIS SECTION DOES NOT AFFECT THE VALIDITY UNDER ANY
2 OTHER LAW OF A COVENANT IN ANY LEASE CONTRACT MAKING THE LESSEE'S
3 PROMISES IRREVOCABLE AND INDEPENDENT UPON THE LESSEE'S ACCEPTANCE
4 OF THE GOODS.

5 PART 5. DEFAULT

6 SEC. 2A501. (1) WHETHER THE LESSOR OR THE LESSEE IS IN
7 DEFAULT UNDER A LEASE CONTRACT IS DETERMINED BY THE LEASE AGREE-
8 MENT AND THIS ARTICLE.

9 (2) IF THE LESSOR OR THE LESSEE IS IN DEFAULT UNDER THE
10 LEASE CONTRACT, THE PARTY SEEKING ENFORCEMENT HAS RIGHTS AND REM-
11 EDIES AS PROVIDED IN THIS ARTICLE AND, EXCEPT AS LIMITED BY THIS
12 ARTICLE, AS PROVIDED IN THE LEASE AGREEMENT.

13 (3) IF THE LESSOR OR THE LESSEE IS IN DEFAULT UNDER THE
14 LEASE CONTRACT, THE PARTY SEEKING ENFORCEMENT MAY REDUCE THE
15 PARTY'S CLAIM TO JUDGMENT, OR OTHERWISE ENFORCE THE LEASE CON-
16 TRACT BY SELF-HELP OR ANY AVAILABLE JUDICIAL PROCEDURE OR NONJU-
17 DICIAL PROCEDURE, INCLUDING ADMINISTRATIVE PROCEEDING, ARBITRA-
18 TION, OR THE LIKE, IN ACCORDANCE WITH THIS ARTICLE.

19 (4) EXCEPT AS OTHERWISE PROVIDED IN SECTION 1106(1) OR THIS
20 ARTICLE OR THE LEASE AGREEMENT, THE RIGHTS AND REMEDIES REFERRED
21 TO IN SUBSECTIONS (2) AND (3) ARE CUMULATIVE.

22 (5) IF THE LEASE AGREEMENT COVERS BOTH REAL PROPERTY AND
23 GOODS, THE PARTY SEEKING ENFORCEMENT MAY PROCEED UNDER THIS PART
24 AS TO THE GOODS, OR UNDER OTHER APPLICABLE LAW AS TO BOTH THE
25 REAL PROPERTY AND THE GOODS IN ACCORDANCE WITH THAT PARTY'S
26 RIGHTS AND REMEDIES IN RESPECT OF THE REAL PROPERTY, IN WHICH
27 CASE THIS PART DOES NOT APPLY.

1 SEC. 2A502. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE OR
2 THE LEASE AGREEMENT, THE LESSOR OR LESSEE IN DEFAULT UNDER THE
3 LEASE CONTRACT IS NOT ENTITLED TO NOTICE OF DEFAULT OR NOTICE OF
4 ENFORCEMENT FROM THE OTHER PARTY TO THE LEASE AGREEMENT.

5 SEC. 2A503. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTI-
6 CLE, THE LEASE AGREEMENT MAY INCLUDE RIGHTS AND REMEDIES FOR
7 DEFAULT IN ADDITION TO OR IN SUBSTITUTION FOR THOSE PROVIDED IN
8 THIS ARTICLE AND MAY LIMIT OR ALTER THE MEASURE OF DAMAGES RECOV-
9 ERABLE UNDER THIS ARTICLE.

10 (2) RESORT TO A REMEDY PROVIDED UNDER THIS ARTICLE OR IN THE
11 LEASE AGREEMENT IS OPTIONAL UNLESS THE REMEDY IS EXPRESSLY AGREED
12 TO BE EXCLUSIVE. IF CIRCUMSTANCES CAUSE AN EXCLUSIVE OR LIMITED
13 REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE, OR PROVISION FOR AN
14 EXCLUSIVE REMEDY IS UNCONSCIONABLE, REMEDY MAY BE HAD AS PROVIDED
15 IN THIS ARTICLE.

16 (3) CONSEQUENTIAL DAMAGES MAY BE LIQUIDATED UNDER SECTION
17 2A504, OR MAY OTHERWISE BE LIMITED, ALTERED, OR EXCLUDED UNLESS
18 THE LIMITATION, ALTERATION, OR EXCLUSION IS UNCONSCIONABLE.
19 LIMITATION, ALTERATION, OR EXCLUSION OF CONSEQUENTIAL DAMAGES FOR
20 INJURY TO THE PERSON IN THE CASE OF CONSUMER GOODS IS PRIMA FACIE
21 UNCONSCIONABLE BUT LIMITATION, ALTERATION, OR EXCLUSION OF DAM-
22 AGES WHERE THE LOSS IS COMMERCIAL IS NOT PRIMA FACIE
23 UNCONSCIONABLE.

24 (4) RIGHTS AND REMEDIES ON DEFAULT BY THE LESSOR OR THE
25 LESSEE WITH RESPECT TO ANY OBLIGATION OR PROMISE COLLATERAL OR
26 ANCILLARY TO THE LEASE CONTRACT ARE NOT IMPAIRED BY THIS ARTICLE.

1 SEC. 2A504. (1) DAMAGES PAYABLE BY EITHER PARTY FOR
2 DEFAULT, OR ANY OTHER ACT OR OMISSION, INCLUDING INDEMNITY FOR
3 LOSS OR DIMINUTION OF ANTICIPATED TAX BENEFITS OR LOSS OR DAMAGE
4 TO LESSOR'S RESIDUAL INTEREST, MAY BE LIQUIDATED IN THE LEASE
5 AGREEMENT BUT ONLY AT AN AMOUNT OR BY A FORMULA THAT IS REASON-
6 ABLE IN LIGHT OF THE THEN ANTICIPATED HARM CAUSED BY THE DEFAULT
7 OR OTHER ACT OR OMISSION.

8 (2) IF THE LEASE AGREEMENT PROVIDES FOR LIQUIDATION OF DAM-
9 AGES, AND SUCH PROVISION DOES NOT COMPLY WITH SUBSECTION (1), OR
10 SUCH PROVISION IS AN EXCLUSIVE OR LIMITED REMEDY THAT CIRCUM-
11 STANCES CAUSE TO FAIL OF ITS ESSENTIAL PURPOSE, REMEDY MAY BE HAD
12 AS PROVIDED IN THIS ARTICLE.

13 (3) IF THE LESSOR JUSTIFIABLY WITHHOLDS OR STOPS DELIVERY OF
14 GOODS BECAUSE OF THE LESSEE'S DEFAULT OR INSOLVENCY (SECTION
15 2A525 OR 2A526), THE LESSEE IS ENTITLED TO RESTITUTION OF ANY
16 AMOUNT BY WHICH THE SUM OF HIS OR HER PAYMENTS EXCEEDS EITHER OF
17 THE FOLLOWING:

18 (A) THE AMOUNT TO WHICH THE LESSOR IS ENTITLED BY VIRTUE OF
19 TERMS LIQUIDATING THE LESSOR'S DAMAGES IN ACCORDANCE WITH SUBSEC-
20 TION (1).

21 (B) IN THE ABSENCE OF THOSE TERMS, 20% OF THE THEN PRESENT
22 VALUE OF THE TOTAL RENT THE LESSEE WAS OBLIGATED TO PAY FOR THE
23 BALANCE OF THE LEASE TERM, OR, IN THE CASE OF A CONSUMER LEASE,
24 THE LESSER OF SUCH AMOUNT OR \$500.00.

25 (4) A LESSEE'S RIGHT TO RESTITUTION UNDER SUBSECTION (3) IS
26 SUBJECT TO OFFSET TO THE EXTENT THE LESSOR ESTABLISHES ANY OF THE
27 FOLLOWING:

1 (A) A RIGHT TO RECOVER DAMAGES UNDER THE PROVISIONS OF THIS
2 ARTICLE OTHER THAN SUBSECTION (1).

3 (B) THE AMOUNT OR VALUE OF ANY BENEFITS RECEIVED BY THE
4 LESSEE DIRECTLY OR INDIRECTLY BY REASON OF THE LEASE CONTRACT.

5 SEC. 2A505. (1) ON CANCELLATION OF THE LEASE CONTRACT, ALL
6 OBLIGATIONS THAT ARE STILL EXECUTORY ON BOTH SIDES ARE DIS-
7 CHARGED, BUT ANY RIGHT BASED ON PRIOR DEFAULT OR PERFORMANCE SUR-
8 VIVES, AND THE CANCELLING PARTY ALSO RETAINS ANY REMEDY FOR
9 DEFAULT OF THE WHOLE LEASE CONTRACT OR ANY UNPERFORMED BALANCE.
10 (2) ON TERMINATION OF THE LEASE CONTRACT, ALL OBLIGATIONS
11 THAT ARE STILL EXECUTORY ON BOTH SIDES ARE DISCHARGED BUT ANY
12 RIGHT BASED ON PRIOR DEFAULT OR PERFORMANCE SURVIVES.

13 (3) UNLESS THE CONTRARY INTENTION CLEARLY APPEARS, EXPRES-
14 SIONS OF "CANCELLATION," "RESCISSION," OR THE LIKE OF THE LEASE
15 CONTRACT MAY NOT BE CONSTRUED AS A RENUNCIATION OR DISCHARGE OF
16 ANY CLAIM IN DAMAGES FOR AN ANTECEDENT DEFAULT.

17 (4) RIGHTS AND REMEDIES FOR MATERIAL MISREPRESENTATION OR
18 FRAUD INCLUDE ALL RIGHTS AND REMEDIES AVAILABLE UNDER THIS ARTI-
19 CLE FOR DEFAULT.

20 (5) NEITHER RESCISSION NOR A CLAIM FOR RESCISSION OF THE
21 LEASE CONTRACT NOR REJECTION OR RETURN OF THE GOODS MAY BAR OR BE
22 DEEMED INCONSISTENT WITH A CLAIM FOR DAMAGES OR OTHER RIGHT OR
23 REMEDY.

24 SEC. 2A506. (1) AN ACTION FOR DEFAULT UNDER A LEASE CON-
25 TRACT, INCLUDING BREACH OF WARRANTY OR INDEMNITY, MUST BE COM-
26 MENCED WITHIN 4 YEARS AFTER THE CAUSE OF ACTION ACCRUED. BY THE

1 ORIGINAL LEASE CONTRACT THE PARTIES MAY REDUCE THE PERIOD OF
2 LIMITATION TO NOT LESS THAN 1 YEAR.

3 (2) A CAUSE OF ACTION FOR DEFAULT ACCRUES WHEN THE ACT OR
4 OMISSION ON WHICH THE DEFAULT OR BREACH OF WARRANTY IS BASED IS
5 OR SHOULD HAVE BEEN DISCOVERED BY THE AGGRIEVED PARTY, OR WHEN
6 THE DEFAULT OCCURS, WHICHEVER IS LATER. A CAUSE OF ACTION FOR
7 INDEMNITY ACCRUES WHEN THE ACT OR OMISSION ON WHICH THE CLAIM FOR
8 INDEMNITY IS BASED IS OR SHOULD HAVE BEEN DISCOVERED BY THE
9 INDEMNIFIED PARTY, WHICHEVER IS LATER.

10 (3) IF AN ACTION COMMENCED WITHIN THE TIME LIMITED BY SUB-
11 SECTION (1) IS SO TERMINATED AS TO LEAVE AVAILABLE A REMEDY BY
12 ANOTHER ACTION FOR THE SAME DEFAULT OR BREACH OF WARRANTY OR
13 INDEMNITY, THE OTHER ACTION MAY BE COMMENCED AFTER THE EXPIRATION
14 OF THE TIME LIMITED AND WITHIN 6 MONTHS AFTER THE TERMINATION OF
15 THE FIRST ACTION UNLESS THE TERMINATION RESULTED FROM VOLUNTARY
16 DISCONTINUANCE OR FROM DISMISSAL FOR FAILURE OR NEGLECT TO
17 PROSECUTE.

18 (4) THIS SECTION DOES NOT ALTER THE LAW ON TOLLING OF THE
19 STATUTE OF LIMITATIONS NOR DOES IT APPLY TO CAUSES OF ACTION THAT
20 HAVE ACCRUED BEFORE THIS ARTICLE BECOMES EFFECTIVE.

21 SEC. 2A507. (1) DAMAGES BASED ON MARKET RENT (SECTION 2A519
22 OR 2A528) ARE DETERMINED ACCORDING TO THE RENT FOR THE USE OF THE
23 GOODS CONCERNED FOR A LEASE TERM IDENTICAL TO THE REMAINING LEASE
24 TERM OF THE ORIGINAL LEASE AGREEMENT AND PREVAILING AT THE TIME
25 SPECIFIED IN SECTIONS 2A519 AND 2A528.

26 (2) IF EVIDENCE OF RENT FOR THE USE OF THE GOODS CONCERNED
27 FOR A LEASE TERM IDENTICAL TO THE REMAINING LEASE TERM OF THE

1 ORIGINAL LEASE AGREEMENT AND PREVAILING AT THE TIMES OR PLACES
2 DESCRIBED IN THIS ARTICLE IS NOT READILY AVAILABLE, THE RENT PRE-
3 VAILING WITHIN ANY REASONABLE TIME BEFORE OR AFTER THE TIME
4 DESCRIBED OR AT ANY OTHER PLACE OR FOR A DIFFERENT LEASE TERM
5 WHICH IN COMMERCIAL JUDGMENT OR UNDER USAGE OF TRADE WOULD SERVE
6 AS A REASONABLE SUBSTITUTE FOR THE ONE DESCRIBED MAY BE USED,
7 MAKING ANY PROPER ALLOWANCE FOR THE DIFFERENCE, INCLUDING THE
8 COST OF TRANSPORTING THE GOODS TO OR FROM THE OTHER PLACE.

9 (3) EVIDENCE OF A RELEVANT RENT PREVAILING AT A TIME OR
10 PLACE OR FOR A LEASE TERM OTHER THAN THE ONE DESCRIBED IN THIS
11 ARTICLE OFFERED BY 1 PARTY IS NOT ADMISSIBLE UNLESS AND UNTIL HE
12 OR SHE HAS GIVEN THE OTHER PARTY NOTICE THE COURT FINDS SUFFI-
13 CIENT TO PREVENT UNFAIR SURPRISE.

14 (4) IF THE PREVAILING RENT OR VALUE OF ANY GOODS REGULARLY
15 LEASED IN ANY ESTABLISHED MARKET IS IN ISSUE, REPORTS IN OFFICIAL
16 PUBLICATIONS OR TRADE JOURNALS OR IN NEWSPAPERS OR PERIODICALS OF
17 GENERAL CIRCULATION PUBLISHED AS THE REPORTS OF THAT MARKET ARE
18 ADMISSIBLE IN EVIDENCE. THE CIRCUMSTANCES OF THE PREPARATION OF
19 THE REPORT MAY BE SHOWN TO AFFECT ITS WEIGHT BUT NOT ITS
20 ADMISSIBILITY.

21 SEC. 2A508. (1) IF A LESSOR FAILS TO DELIVER THE GOODS IN
22 CONFORMITY TO THE LEASE CONTRACT (SECTION 2A509) OR REPUDIATES
23 THE LEASE CONTRACT (SECTION 2A402), OR A LESSEE RIGHTFULLY
24 REJECTS THE GOODS (SECTION 2A509) OR JUSTIFIABLY REVOKES ACCEP-
25 TANCE OF THE GOODS (SECTION 2A517), THEN WITH RESPECT TO ANY
26 GOODS INVOLVED, AND WITH RESPECT TO ALL OF THE GOODS IF UNDER AN
27 INSTALLMENT LEASE CONTRACT THE VALUE OF THE WHOLE LEASE CONTRACT

1 IS SUBSTANTIALLY IMPAIRED (SECTION 2A510), THE LESSOR IS IN
2 DEFAULT UNDER THE LEASE CONTRACT AND THE LESSEE MAY DO ANY OR ALL
3 OF THE FOLLOWING:

4 (A) CANCEL THE LEASE CONTRACT (SECTION 2A505(1)).

5 (B) RECOVER SO MUCH OF THE RENT AND SECURITY AS HAS BEEN
6 PAID AND IS JUST UNDER THE CIRCUMSTANCES.

7 (C) COVER AND RECOVER DAMAGES AS TO ALL GOODS AFFECTED
8 WHETHER OR NOT THEY HAVE BEEN IDENTIFIED TO THE LEASE CONTRACT
9 (SECTION 2A518 OR 2A520), OR RECOVER DAMAGES FOR NONDELIVERY
10 (SECTION 2A519 OR 2A520).

11 (D) EXERCISE ANY OTHER RIGHTS OR PURSUE ANY OTHER REMEDIES
12 PROVIDED IN THE LEASE CONTRACT.

13 (2) IF A LESSOR FAILS TO DELIVER THE GOODS IN CONFORMITY TO
14 THE LEASE CONTRACT OR REPUDIATES THE LEASE CONTRACT, THE LESSEE
15 MAY ALSO DO EITHER OF THE FOLLOWING:

16 (A) IF THE GOODS HAVE BEEN IDENTIFIED, RECOVER THEM (SECTION
17 2A522).

18 (B) IN A PROPER CASE, OBTAIN SPECIFIC PERFORMANCE OR REPLEVY
19 THE GOODS (SECTION 2A521).

20 (3) IF A LESSOR IS OTHERWISE IN DEFAULT UNDER A LEASE CON-
21 TRACT, THE LESSEE MAY EXERCISE THE RIGHTS AND PURSUE THE REMEDIES
22 PROVIDED IN THE LEASE CONTRACT, WHICH MAY INCLUDE THE RIGHT TO
23 CANCEL THE LEASE, AND IN SECTION 2A519(3).

24 (4) IF A LESSOR HAS BREACHED A WARRANTY, WHETHER EXPRESS OR
25 IMPLIED, THE LESSEE MAY RECOVER DAMAGES (SECTION 2A519(4)).

26 (5) ON RIGHTFUL REJECTION OR JUSTIFIABLE REVOCATION OF
27 ACCEPTANCE, A LESSEE HAS A SECURITY INTEREST IN GOODS IN THE

1 LESSEE'S POSSESSION OR CONTROL FOR ANY RENT AND SECURITY THAT HAS
2 BEEN PAID AND ANY EXPENSES REASONABLY INCURRED IN THEIR INSPEC-
3 TION, RECEIPT, TRANSPORTATION, AND CARE AND CUSTODY AND MAY HOLD
4 THOSE GOODS AND DISPOSE OF THEM IN GOOD FAITH AND IN A COMMER-
5 Cially REASONABLE MANNER, SUBJECT TO SECTION 2A527(5).

6 (6) SUBJECT TO THE PROVISIONS OF SECTION 2A407, A LESSEE, ON
7 NOTIFYING THE LESSOR OF THE LESSEE'S INTENTION TO DO SO, MAY
8 DEDUCT ALL OR ANY PART OF THE DAMAGES RESULTING FROM ANY DEFAULT
9 UNDER THE LEASE CONTRACT FROM ANY PART OF THE RENT STILL DUE
10 UNDER THE SAME LEASE CONTRACT.

11 SEC. 2A509. (1) SUBJECT TO THE PROVISIONS OF SECTION 2A510
12 ON DEFAULT IN INSTALLMENT LEASE CONTRACTS, IF THE GOODS OR THE
13 TENDER OR DELIVERY FAIL IN ANY RESPECT TO CONFORM TO THE LEASE
14 CONTRACT, THE LESSEE MAY REJECT OR ACCEPT THE GOODS OR ACCEPT ANY
15 COMMERCIAL UNIT OR UNITS AND REJECT THE REST OF THE GOODS.

16 (2) REJECTION OF GOODS IS INEFFECTIVE UNLESS IT IS WITHIN A
17 REASONABLE TIME AFTER TENDER OR DELIVERY OF THE GOODS AND THE
18 LESSEE SEASONABLY NOTIFIES THE LESSOR.

19 SEC. 2A510. (1) UNDER AN INSTALLMENT LEASE CONTRACT A
20 LESSEE MAY REJECT ANY DELIVERY THAT IS NONCONFORMING IF THE NON-
21 CONFORMITY SUBSTANTIALLY IMPAIRS THE VALUE OF THAT DELIVERY AND
22 CANNOT BE CURED OR THE NONCONFORMITY IS A DEFECT IN THE REQUIRED
23 DOCUMENTS; BUT IF THE NONCONFORMITY DOES NOT FALL WITHIN SUBSEC-
24 TION (2) AND THE LESSOR OR THE SUPPLIER GIVES ADEQUATE ASSURANCE
25 OF ITS CURE, THE LESSEE MUST ACCEPT THAT DELIVERY.

26 (2) WHENEVER NONCONFORMITY OR DEFAULT WITH RESPECT TO 1 OR
27 MORE DELIVERIES SUBSTANTIALLY IMPAIRS THE VALUE OF THE

1 INSTALLMENT LEASE CONTRACT AS A WHOLE THERE IS A DEFAULT WITH
2 RESPECT TO THE WHOLE. BUT, THE AGGRIEVED PARTY REINSTATES THE
3 INSTALLMENT LEASE CONTRACT AS A WHOLE IF THE AGGRIEVED PARTY
4 ACCEPTS A NONCONFORMING DELIVERY WITHOUT SEASONABLY NOTIFYING OF
5 CANCELLATION OR BRINGS AN ACTION WITH RESPECT ONLY TO PAST DELIV-
6 ERIES OR DEMANDS PERFORMANCE AS TO FUTURE DELIVERIES.

7 SEC. 2A511. (1) SUBJECT TO ANY SECURITY INTEREST OF A
8 LESSEE (SECTION 2A508(5)), IF A LESSOR OR A SUPPLIER HAS NO AGENT
9 OR PLACE OF BUSINESS AT THE MARKET OF REJECTION, A MERCHANT
10 LESSEE, AFTER REJECTION OF GOODS IN HIS OR HER POSSESSION OR CON-
11 TROL, SHALL FOLLOW ANY REASONABLE INSTRUCTIONS RECEIVED FROM THE
12 LESSOR OR THE SUPPLIER WITH RESPECT TO THE GOODS. IN THE ABSENCE
13 OF THOSE INSTRUCTIONS, A MERCHANT LESSEE SHALL MAKE REASONABLE
14 EFFORTS TO SELL, LEASE, OR OTHERWISE DISPOSE OF THE GOODS FOR THE
15 LESSOR'S ACCOUNT IF THEY THREATEN TO DECLINE IN VALUE SPEEDILY.
16 INSTRUCTIONS ARE NOT REASONABLE IF ON DEMAND INDEMNITY FOR
17 EXPENSES IS NOT FORTHCOMING.

18 (2) IF A MERCHANT LESSEE OR ANY OTHER LESSEE (SECTION 2A512)
19 DISPOSES OF GOODS, HE OR SHE IS ENTITLED TO REIMBURSEMENT EITHER
20 FROM THE LESSOR OR THE SUPPLIER OR OUT OF THE PROCEEDS FOR REA-
21 SONABLE EXPENSES OF CARING FOR AND DISPOSING OF THE GOODS AND, IF
22 THE EXPENSES INCLUDE NO DISPOSITION COMMISSION, TO SUCH COMMIS-
23 SION AS IS USUAL IN THE TRADE, OR IF THERE IS NONE, TO A REASON-
24 ABLE SUM NOT EXCEEDING 10% OF THE GROSS PROCEEDS.

25 (3) IN COMPLYING WITH THIS SECTION OR SECTION 2A512, THE
26 LESSEE IS HELD ONLY TO GOOD FAITH. GOOD FAITH CONDUCT HEREUNDER

1 IS NEITHER ACCEPTANCE OR CONVERSION NOR THE BASIS OF AN ACTION
2 FOR DAMAGES.

3 (4) A PURCHASER WHO PURCHASES IN GOOD FAITH FROM A LESSEE
4 PURSUANT TO THIS SECTION OR SECTION 2A512 TAKES THE GOODS FREE OF
5 ANY RIGHTS OF THE LESSOR AND THE SUPPLIER EVEN THOUGH THE LESSEE
6 FAILS TO COMPLY WITH 1 OR MORE OF THE REQUIREMENTS OF THIS
7 ARTICLE.

8 SEC. 2A512. (1) EXCEPT AS OTHERWISE PROVIDED WITH RESPECT
9 TO GOODS THAT THREATEN TO DECLINE IN VALUE SPEEDILY (SECTION
10 2A511) AND SUBJECT TO ANY SECURITY INTEREST OF A LESSEE (SECTION
11 2A505(5)) THE FOLLOWING RULES APPLY:

12 (A) THE LESSEE, AFTER REJECTION OF GOODS IN THE LESSEE'S
13 POSSESSION, SHALL HOLD THEM WITH REASONABLE CARE AT THE LESSOR'S
14 OR THE SUPPLIER'S DISPOSITION FOR A REASONABLE TIME AFTER THE
15 LESSEE'S SEASONABLE NOTIFICATION OF REJECTION.

16 (B) IF THE LESSOR OR THE SUPPLIER GIVES NO INSTRUCTIONS
17 WITHIN A REASONABLE TIME AFTER NOTIFICATION OF REJECTION, THE
18 LESSEE MAY STORE THE REJECTED GOODS FOR THE LESSOR'S OR THE
19 SUPPLIER'S ACCOUNT OR SHIP THEM TO THE LESSOR OR THE SUPPLIER OR
20 DISPOSE OF THEM FOR THE LESSOR'S OR THE SUPPLIER'S ACCOUNT WITH
21 REIMBURSEMENT IN THE MANNER PROVIDED IN SECTION 2A511.

22 (C) EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION, THE LESSEE
23 HAS NO FURTHER OBLIGATIONS WITH REGARD TO GOODS RIGHTFULLY
24 REJECTED.

25 (2) ACTION BY THE LESSEE PURSUANT TO SUBSECTION (1) IS NOT
26 ACCEPTANCE OR CONVERSION.

1 SEC. 2A513. (1) IF ANY TENDER OR DELIVERY BY THE LESSOR OR
2 THE SUPPLIER IS REJECTED BECAUSE NONCONFORMING AND THE TIME FOR
3 PERFORMANCE HAS NOT YET EXPIRED, THE LESSOR OR THE SUPPLIER MAY
4 SEASONABLY NOTIFY THE LESSEE OF THE LESSOR'S OR THE SUPPLIER'S
5 INTENTION TO CURE AND MAY THEN MAKE A CONFORMING DELIVERY WITHIN
6 THE TIME PROVIDED IN THE LEASE CONTRACT.

7 (2) IF THE LESSEE REJECTS A NONCONFORMING TENDER THAT THE
8 LESSOR OR THE SUPPLIER HAD REASONABLE GROUNDS TO BELIEVE WOULD BE
9 ACCEPTABLE WITH OR WITHOUT MONEY ALLOWANCE, THE LESSOR OR THE
10 SUPPLIER MAY HAVE A FURTHER REASONABLE TIME TO SUBSTITUTE A CON-
11 FORMING TENDER IF HE OR SHE SEASONABLY NOTIFIES THE LESSEE.

12 SEC. 2A514. (1) IN REJECTING GOODS, A LESSEE'S FAILURE TO
13 STATE A PARTICULAR DEFECT THAT IS ASCERTAINABLE BY REASONABLE
14 INSPECTION PRECLUDES THE LESSEE FROM RELYING ON THE DEFECT TO
15 JUSTIFY REJECTION OR TO ESTABLISH DEFAULT (i) IF, STATED SEASON-
16 ABLY, THE LESSOR OR THE SUPPLIER COULD HAVE CURED IT, OR (ii)
17 BETWEEN MERCHANTS IF THE LESSOR OR THE SUPPLIER AFTER REJECTION
18 HAS MADE A REQUEST IN WRITING FOR A FULL AND FINAL WRITTEN STATE-
19 MENT OF ALL DEFECTS ON WHICH THE LESSEE PROPOSES TO RELY.

20 (2) A LESSEE'S FAILURE TO RESERVE RIGHTS WHEN PAYING RENT OR
21 OTHER CONSIDERATION AGAINST DOCUMENTS PRECLUDES RECOVERY OF THE
22 PAYMENT FOR DEFECTS APPARENT ON THE FACE OF THE DOCUMENTS.

23 SEC. 2A515. (1) ACCEPTANCE OF GOODS OCCURS AFTER THE LESSEE
24 HAS HAD A REASONABLE OPPORTUNITY TO INSPECT THE GOODS AND EITHER
25 OF THE FOLLOWING APPLIES:

26 (A) THE LESSEE SIGNIFIES OR ACTS WITH RESPECT TO THE GOODS
27 IN A MANNER THAT SIGNIFIES TO THE LESSOR OR THE SUPPLIER THAT THE

1 GOODS ARE CONFORMING OR THAT THE LESSEE WILL TAKE OR RETAIN THEM
2 IN SPITE OF THEIR NONCONFORMITY.

3 (B) THE LESSEE FAILS TO MAKE AN EFFECTIVE REJECTION OF THE
4 GOODS (SECTION 2A509(2)).

5 (2) ACCEPTANCE OF A PART OF ANY COMMERCIAL UNIT IS ACCEP-
6 TANCE OF THAT ENTIRE UNIT.

7 SEC. 2A516. (1) A LESSEE MUST PAY RENT FOR ANY GOODS
8 ACCEPTED IN ACCORDANCE WITH THE LEASE CONTRACT, WITH DUE ALLOW-
9 ANCE FOR GOODS RIGHTFULLY REJECTED OR NOT DELIVERED.

10 (2) A LESSEE'S ACCEPTANCE OF GOODS PRECLUDES REJECTION OF
11 THE GOODS ACCEPTED. IN THE CASE OF A FINANCE LEASE, IF MADE WITH
12 KNOWLEDGE OF A NONCONFORMITY, ACCEPTANCE CANNOT BE REVOKED
13 BECAUSE OF IT. IN ANY OTHER CASE, IF MADE WITH KNOWLEDGE OF A
14 NONCONFORMITY, ACCEPTANCE CANNOT BE REVOKED BECAUSE OF IT UNLESS
15 THE ACCEPTANCE WAS ON THE REASONABLE ASSUMPTION THAT THE NONCON-
16 FORMITY WOULD BE SEASONABLY CURED. ACCEPTANCE DOES NOT OF ITSELF
17 IMPAIR ANY OTHER REMEDY PROVIDED BY THIS ARTICLE OR THE LEASE
18 AGREEMENT FOR NONCONFORMITY.

19 (3) IF A TENDER HAS BEEN ACCEPTED:

20 (A) WITHIN A REASONABLE TIME AFTER THE LESSEE DISCOVERS OR
21 SHOULD HAVE DISCOVERED ANY DEFAULT, THE LESSEE SHALL NOTIFY THE
22 LESSOR AND THE SUPPLIER, IF ANY, OR BE BARRED FROM ANY REMEDY
23 AGAINST THE PARTY NOT NOTIFIED.

24 (B) EXCEPT IN THE CASE OF A CONSUMER LEASE, WITHIN A REASON-
25 ABLE TIME AFTER THE LESSEE RECEIVES NOTICE OF LITIGATION FOR
26 INFRINGEMENT OR THE LIKE (SECTION 2A211), THE LESSEE SHALL NOTIFY

1 THE LESSOR OR BE BARRED FROM ANY REMEDY OVER FOR LIABILITY
2 ESTABLISHED BY THE LITIGATION.

3 (C) THE BURDEN IS ON THE LESSEE TO ESTABLISH ANY DEFAULT.

4 (4) IF A LESSEE IS SUED FOR BREACH OF A WARRANTY OR OTHER
5 OBLIGATION FOR WHICH A LESSOR OR A SUPPLIER IS ANSWERABLE OVER
6 THE FOLLOWING APPLY:

7 (A) THE LESSEE MAY GIVE THE LESSOR OR THE SUPPLIER, OR BOTH,
8 WRITTEN NOTICE OF THE LITIGATION. IF THE NOTICE STATES THAT THE
9 PERSON NOTIFIED MAY COME IN AND DEFEND AND THAT IF THE PERSON
10 NOTIFIED DOES NOT DO SO THAT PERSON WILL BE BOUND IN ANY ACTION
11 AGAINST THAT PERSON BY THE LESSEE BY ANY DETERMINATION OF FACT
12 COMMON TO THE 2 LITIGATIONS, THEN UNLESS THE PERSON NOTIFIED
13 AFTER SEASONABLE RECEIPT OF THE NOTICE DOES COME IN AND DEFEND
14 THAT PERSON IS SO BOUND.

15 (B) THE LESSOR OR THE SUPPLIER MAY DEMAND IN WRITING THAT
16 THE LESSEE TURN OVER CONTROL OF THE LITIGATION INCLUDING SETTLE-
17 MENT IF THE CLAIM IS ONE FOR INFRINGEMENT OR THE LIKE (SECTION
18 2A211) OR ELSE BE BARRED FROM ANY REMEDY OVER. IF THE DEMAND
19 STATES THAT THE LESSOR OR THE SUPPLIER AGREES TO BEAR ALL EXPENSE
20 AND TO SATISFY ANY ADVERSE JUDGMENT, THEN UNLESS THE LESSEE AFTER
21 SEASONABLE RECEIPT OF THE DEMAND DOES TURN OVER CONTROL THE
22 LESSEE IS SO BARRED.

23 (5) SUBSECTIONS (3) AND (4) APPLY TO ANY OBLIGATION OF A
24 LESSEE TO HOLD THE LESSOR OR THE SUPPLIER HARMLESS AGAINST
25 INFRINGEMENT OR THE LIKE (SECTION 2A211).

1 SEC. 2A517. (1) A LESSEE MAY REVOKE ACCEPTANCE OF A LOT OR
2 COMMERCIAL UNIT WHOSE NONCONFORMITY SUBSTANTIALLY IMPAIRS ITS
3 VALUE TO THE LESSEE IF THE LESSEE HAS ACCEPTED IT:

4 (A) EXCEPT IN THE CASE OF A FINANCE LEASE, ON THE REASONABLE
5 ASSUMPTION THAT ITS NONCONFORMITY WOULD BE CURED AND IT HAS NOT
6 BEEN SEASONABLY CURED.

7 (B) WITHOUT DISCOVERY OF THE NONCONFORMITY IF THE LESSEE'S
8 ACCEPTANCE WAS REASONABLY INDUCED EITHER BY THE LESSOR'S ASSUR-
9 ANCES OR, EXCEPT IN THE CASE OF A FINANCE LEASE, BY THE DIFFI-
10 CULTY OF DISCOVERY BEFORE ACCEPTANCE.

11 (2) EXCEPT IN THE CASE OF A FINANCE LEASE THAT IS NOT A CON-
12 SUMER LEASE, A LESSEE MAY REVOKE ACCEPTANCE OF A LOT OR COMMER-
13 CIAL UNIT IF THE LESSOR DEFAULTS UNDER THE LEASE CONTRACT AND THE
14 DEFAULT SUBSTANTIALLY IMPAIRS THE VALUE OF THAT LOT OR COMMERCIAL
15 UNIT TO THE LESSEE.

16 (3) IF THE LEASE AGREEMENT SO PROVIDES, THE LESSEE MAY
17 REVOKE ACCEPTANCE OF A LOT OR COMMERCIAL UNIT BECAUSE OF OTHER
18 DEFAULTS BY THE LESSOR.

19 (4) REVOCATION OF ACCEPTANCE MUST OCCUR WITHIN A REASONABLE
20 TIME AFTER THE LESSEE DISCOVERS OR SHOULD HAVE DISCOVERED THE
21 GROUND FOR IT AND BEFORE ANY SUBSTANTIAL CHANGE IN CONDITION OF
22 THE GOODS WHICH IS NOT CAUSED BY THE NONCONFORMITY. REVOCATION
23 IS NOT EFFECTIVE UNTIL THE LESSEE NOTIFIES THE LESSOR.

24 (5) A LESSEE WHO SO REVOKES HAS THE SAME RIGHTS AND DUTIES
25 WITH REGARD TO THE GOODS INVOLVED AS IF THE LESSEE HAD REJECTED
26 THEM.

1 SEC. 2A518. (1) AFTER DEFAULT BY A LESSOR UNDER THE LEASE
2 CONTRACT OF THE TYPE DESCRIBED IN SECTION 2A508(1) OR, IF AGREED,
3 AFTER OTHER DEFAULT BY THE LESSOR, THE LESSEE MAY COVER BY MAKING
4 ANY PURCHASE OR LEASE OF OR CONTRACT TO PURCHASE OR LEASE GOODS
5 IN SUBSTITUTION FOR THOSE DUE FROM THE LESSOR.

6 (2) EXCEPT AS OTHERWISE PROVIDED WITH RESPECT TO DAMAGES
7 LIQUIDATED IN THE LEASE AGREEMENT (SECTION 2A504) OR OTHERWISE
8 DETERMINED PURSUANT TO AGREEMENT OF THE PARTIES (SECTIONS 1102(3)
9 AND 2A503), IF A LESSEE'S COVER IS BY A LEASE AGREEMENT SUBSTAN-
10 Tially SIMILAR TO THE ORIGINAL LEASE AGREEMENT AND THE NEW LEASE
11 AGREEMENT IS MADE IN GOOD FAITH AND IN A COMMERCIALY REASONABLE
12 MANNER, THE LESSEE MAY RECOVER FROM THE LESSOR AS DAMAGES (i) THE
13 PRESENT VALUE, AS OF THE DATE OF THE COMMENCEMENT OF THE TERM OF
14 THE NEW LEASE AGREEMENT, OF THE RENT UNDER THE NEW LEASE AGREE-
15 MENT APPLICABLE TO THAT PERIOD OF THE NEW LEASE TERM WHICH IS
16 COMPARABLE TO THE THEN REMAINING TERM OF THE ORIGINAL LEASE
17 AGREEMENT MINUS THE PRESENT VALUE AS OF THE SAME DATE OF THE
18 TOTAL RENT FOR THE THEN REMAINING LEASE TERM OF THE ORIGINAL
19 LEASE AGREEMENT AND (ii) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES
20 LESS EXPENSES SAVED IN CONSEQUENCE OF THE LESSOR'S DEFAULT.

21 (3) IF A LESSEE'S COVER IS BY LEASE AGREEMENT THAT FOR ANY
22 REASON DOES NOT QUALIFY FOR TREATMENT UNDER SUBSECTION (2), OR IS
23 BY PURCHASE OR OTHERWISE, THE LESSEE MAY RECOVER FROM THE LESSOR
24 AS IF THE LESSEE HAD ELECTED NOT TO COVER AND SECTION 2A519
25 GOVERNS.

26 SEC. 2A519. (1) EXCEPT AS OTHERWISE PROVIDED WITH RESPECT
27 TO DAMAGES LIQUIDATED IN THE LEASE AGREEMENT (SECTION 2A504) OR

1 OTHERWISE DETERMINED PURSUANT TO AGREEMENT OF THE PARTIES
2 (SECTIONS 1102(3) AND 2A503), IF A LESSEE ELECTS NOT TO COVER OR
3 A LESSEE ELECTS TO COVER AND THE COVER IS BY LEASE AGREEMENT THAT
4 FOR ANY REASON DOES NOT QUALIFY FOR TREATMENT UNDER
5 SECTION 2A518(2), OR IS BY PURCHASE OR OTHERWISE, THE MEASURE OF
6 DAMAGES FOR NONDELIVERY OR REPUDIATION BY THE LESSOR OR FOR
7 REJECTION OR REVOCATION OF ACCEPTANCE BY THE LESSEE IS THE
8 PRESENT VALUE, AS OF THE DATE OF THE DEFAULT, OF THE THEN MARKET
9 RENT MINUS THE PRESENT VALUE AS OF THE SAME DATE OF THE ORIGINAL
10 RENT, COMPUTED FOR THE REMAINING LEASE TERM OF THE ORIGINAL LEASE
11 AGREEMENT TOGETHER WITH INCIDENTAL AND CONSEQUENTIAL DAMAGES,
12 LESS EXPENSES SAVED IN CONSEQUENCE OF THE LESSOR'S DEFAULT.

13 (2) MARKET RENT IS TO BE DETERMINED AS OF THE PLACE FOR
14 TENDER OR, IN CASES OF REJECTION AFTER ARRIVAL OR REVOCATION OF
15 ACCEPTANCE, AS OF THE PLACE OF ARRIVAL.

16 (3) EXCEPT AS OTHERWISE AGREED, IF THE LESSEE HAS ACCEPTED
17 GOODS AND GIVEN NOTIFICATION (SECTION 2A516(3)), THE MEASURE OF
18 DAMAGES FOR NONCONFORMING TENDER OR DELIVERY OR OTHER DEFAULT BY
19 A LESSOR IS THE LOSS RESULTING IN THE ORDINARY COURSE OF EVENTS
20 FROM THE LESSOR'S DEFAULT AS DETERMINED IN ANY MANNER THAT IS
21 REASONABLE TOGETHER WITH INCIDENTAL AND CONSEQUENTIAL DAMAGES,
22 LESS EXPENSES SAVED IN CONSEQUENCE OF THE LESSOR'S DEFAULT.

23 (4) EXCEPT AS OTHERWISE AGREED, THE MEASURE OF DAMAGES FOR
24 BREACH OF WARRANTY IS THE PRESENT VALUE AT THE TIME AND PLACE OF
25 ACCEPTANCE OF THE DIFFERENCE BETWEEN THE VALUE OF THE USE OF THE
26 GOODS ACCEPTED AND THE VALUE IF THEY HAD BEEN AS WARRANTED FOR
27 THE LEASE TERM, UNLESS SPECIAL CIRCUMSTANCES SHOW PROXIMATE

1 DAMAGES OF A DIFFERENT AMOUNT, TOGETHER WITH INCIDENTAL AND
2 CONSEQUENTIAL DAMAGES, LESS EXPENSES SAVED IN CONSEQUENCE OF THE
3 LESSOR'S DEFAULT OR BREACH OF WARRANTY.

4 SEC. 2A520. (1) INCIDENTAL DAMAGES RESULTING FROM A
5 LESSOR'S DEFAULT INCLUDE EXPENSES REASONABLY INCURRED IN INSPEC-
6 TION, RECEIPT, TRANSPORTATION, AND CARE AND CUSTODY OF GOODS
7 RIGHTFULLY REJECTED OR GOODS THE ACCEPTANCE OF WHICH IS JUSTIFI-
8 ABLY REVOKED, ANY COMMERCIALY REASONABLE CHARGES, EXPENSES, OR
9 COMMISSIONS IN CONNECTION WITH EFFECTING COVER, AND ANY OTHER
10 REASONABLE EXPENSE INCIDENT TO THE DEFAULT.

11 (2) CONSEQUENTIAL DAMAGES RESULTING FROM A LESSOR'S DEFAULT
12 INCLUDE THE FOLLOWING:

13 (A) ANY LOSS RESULTING FROM GENERAL OR PARTICULAR REQUIRE-
14 MENTS AND NEEDS OF WHICH THE LESSOR AT THE TIME OF CONTRACTING
15 HAD REASON TO KNOW AND WHICH COULD NOT REASONABLY BE PREVENTED BY
16 COVER OR OTHERWISE.

17 (B) INJURY TO PERSON OR PROPERTY PROXIMATELY RESULTING FROM
18 ANY BREACH OF WARRANTY.

19 SEC. 2A521. (1) SPECIFIC PERFORMANCE MAY BE DECREED IF THE
20 GOODS ARE UNIQUE OR IN OTHER PROPER CIRCUMSTANCES.

21 (2) A DECREE FOR SPECIFIC PERFORMANCE MAY INCLUDE ANY TERMS
22 AND CONDITIONS AS TO PAYMENT OF THE RENT, DAMAGES, OR OTHER
23 RELIEF THAT THE COURT DEEMS JUST.

24 (3) A LESSEE HAS A RIGHT OF REPLEVIN, DETINUE, SEQUESTRA-
25 TION, CLAIM AND DELIVERY, OR THE LIKE FOR GOODS IDENTIFIED TO THE
26 LEASE CONTRACT IF AFTER REASONABLE EFFORT THE LESSEE IS UNABLE TO

1 EFFECT COVER FOR THOSE GOODS OR THE CIRCUMSTANCES REASONABLY
2 INDICATE THAT THE EFFORT WILL BE UNAVAILING.

3 SEC. 2A522. (1) SUBJECT TO SUBSECTION (2) AND EVEN THOUGH
4 THE GOODS HAVE NOT BEEN SHIPPED, A LESSEE WHO HAS PAID A PART OR
5 ALL OF THE RENT AND SECURITY FOR GOODS IDENTIFIED TO A LEASE CON-
6 TRACT (SECTION 2A217) ON MAKING AND KEEPING GOOD A TENDER OF ANY
7 UNPAID PORTION OF THE RENT AND SECURITY DUE UNDER THE LEASE CON-
8 TRACT MAY RECOVER THE GOODS IDENTIFIED FROM THE LESSOR IF THE
9 LESSOR BECOMES INSOLVENT WITHIN 10 DAYS AFTER RECEIPT OF THE
10 FIRST INSTALLMENT OF RENT AND SECURITY.

11 (2) A LESSEE ACQUIRES THE RIGHT TO RECOVER GOODS IDENTIFIED
12 TO A LEASE CONTRACT ONLY IF THEY CONFORM TO THE LEASE CONTRACT.

13 SEC. 2A523. (1) IF A LESSEE WRONGFULLY REJECTS OR REVOKES
14 ACCEPTANCE OF GOODS OR FAILS TO MAKE A PAYMENT WHEN DUE OR REPU-
15 DIATES WITH RESPECT TO A PART OR THE WHOLE, THEN, WITH RESPECT TO
16 ANY GOODS INVOLVED, AND WITH RESPECT TO ALL OF THE GOODS IF UNDER
17 AN INSTALLMENT LEASE CONTRACT THE VALUE OF THE WHOLE LEASE CON-
18 TRACT IS SUBSTANTIALLY IMPAIRED (SECTION 2A510), THE LESSEE IS IN
19 DEFAULT UNDER THE LEASE CONTRACT AND THE LESSOR MAY DO ANY OF THE
20 FOLLOWING:

21 (A) CANCEL THE LEASE CONTRACT (SECTION 2A505(1)).

22 (B) PROCEED RESPECTING GOODS NOT IDENTIFIED TO THE LEASE
23 CONTRACT (SECTION 2A524).

24 (C) WITHHOLD DELIVERY OF THE GOODS AND TAKE POSSESSION OF
25 GOODS PREVIOUSLY DELIVERED (SECTION 2A525).

26 (D) STOP DELIVERY OF THE GOODS BY ANY BAILEE (SECTION
27 2A526).

1 (E) DISPOSE OF THE GOODS AND RECOVER DAMAGES (SECTION
2 2A527), RETAIN THE GOODS AND RECOVER DAMAGES (SECTION 2A528), OR,
3 IN A PROPER CASE, RECOVER RENT (SECTION 2A529).

4 (F) EXERCISE ANY OTHER RIGHTS OR PURSUE ANY OTHER REMEDIES
5 PROVIDED IN THE LEASE CONTRACT.

6 (2) IF A LESSOR DOES NOT FULLY EXERCISE A RIGHT OR OBTAIN A
7 REMEDY TO WHICH THE LESSOR IS ENTITLED UNDER SUBSECTION (1), THE
8 LESSOR MAY RECOVER THE LOSS RESULTING IN THE ORDINARY COURSE OF
9 EVENTS FROM THE LESSEE'S DEFAULT AS DETERMINED IN ANY REASONABLE
10 MANNER, TOGETHER WITH INCIDENTAL DAMAGES, LESS EXPENSES SAVED IN
11 CONSEQUENCES OF THE LESSEE'S DEFAULT.

12 (3) IF A LESSEE IS OTHERWISE IN DEFAULT UNDER A LEASE CON-
13 TRACT, THE LESSOR MAY EXERCISE THE RIGHTS AND PURSUE THE REMEDIES
14 PROVIDED IN THE LEASE CONTRACT, WHICH MAY INCLUDE A RIGHT TO
15 CANCEL THE LEASE. IN ADDITION, UNLESS OTHERWISE PROVIDED IN THE
16 LEASE CONTRACT, IF THE DEFAULT SUBSTANTIALLY IMPAIRS THE VALUE OF
17 THE LEASE CONTRACT TO THE LESSOR, THE LESSOR MAY EXERCISE THE
18 RIGHTS AND PURSUE THE REMEDIES PROVIDED IN SUBSECTION (1) OR (2),
19 OR IF THE DEFAULT DOES NOT SUBSTANTIALLY IMPAIR THE VALUE OF THE
20 LEASE CONTRACT TO THE LESSOR, THE LESSOR MAY RECOVER AS PROVIDED
21 IN SUBSECTION (2).

22 SEC. 2A524. (1) A LESSOR AGGRIEVED UNDER SECTION 2A523(1)
23 MAY DO ANY OF THE FOLLOWING:

24 (A) IDENTIFY TO THE LEASE CONTRACT CONFORMING GOODS NOT
25 ALREADY IDENTIFIED IF AT THE TIME THE LESSOR LEARNED OF THE
26 DEFAULT THEY WERE IN THE LESSOR'S OR THE SUPPLIER'S POSSESSION OR
27 CONTROL.

1 (B) DISPOSE OF GOODS (SECTION 2A527(1)) THAT DEMONSTRABLY
2 HAVE BEEN INTENDED FOR THE PARTICULAR LEASE CONTRACT EVEN THOUGH
3 THOSE GOODS ARE UNFINISHED.

4 (2) IF THE GOODS ARE UNFINISHED, IN THE EXERCISE OF REASON-
5 ABLE COMMERCIAL JUDGMENT FOR THE PURPOSES OF AVOIDING LOSS AND OF
6 EFFECTIVE REALIZATION, AN AGGRIEVED LESSOR OR THE SUPPLIER MAY
7 EITHER COMPLETE MANUFACTURE AND WHOLLY IDENTIFY THE GOODS TO THE
8 LEASE CONTRACT OR CEASE MANUFACTURE AND LEASE, SELL, OR OTHERWISE
9 DISPOSE OF THE GOODS FOR SCRAP OR SALVAGE VALUE OR PROCEED IN ANY
10 OTHER REASONABLE MANNER.

11 SEC. 2A525. (1) IF A LESSOR DISCOVERS THE LESSEE TO BE
12 INSOLVENT, THE LESSOR MAY REFUSE TO DELIVER THE GOODS.

13 (2) AFTER A DEFAULT BY THE LESSEE UNDER THE LEASE CONTRACT
14 OF THE TYPE DESCRIBED IN SECTION 2A523(1) OR 2A523(3)(A) OR, IF
15 AGREED, AFTER OTHER DEFAULT BY THE LESSEE, THE LESSEE HAS THE
16 RIGHT TO TAKE POSSESSION OF THE GOODS. IF THE LEASE CONTRACT SO
17 PROVIDES, THE LESSOR MAY REQUIRE THE LESSEE TO ASSEMBLE THE GOODS
18 AND MAKE THEM AVAILABLE TO THE LESSOR AT A PLACE TO BE DESIGNATED
19 BY THE LESSOR WHICH IS REASONABLY CONVENIENT TO BOTH PARTIES.
20 WITHOUT REMOVAL, THE LESSOR MAY RENDER UNUSABLE ANY GOODS
21 EMPLOYED IN TRADE OR BUSINESS, AND MAY DISPOSE OF GOODS ON THE
22 LESSEE'S PREMISES (SECTION 2A527).

23 (3) THE LESSOR MAY PROCEED UNDER SUBSECTION (2) WITHOUT
24 JUDICIAL PROCESS IF THAT CAN BE DONE WITHOUT BREACH OF THE PEACE
25 OR THE LESSOR MAY PROCEED BY ACTION.

26 SEC. 2A526. (1) A LESSOR MAY STOP DELIVERY OF GOODS IN THE
27 POSSESSION OF A CARRIER OR OTHER BAILEE IF THE LESSOR DISCOVERS

1 THE LESSEE TO BE INSOLVENT AND MAY STOP DELIVERY OF CARLOAD,
2 TRUCKLOAD, PLANELOAD, OR LARGER SHIPMENTS OF EXPRESS OR FREIGHT
3 IF THE LESSEE REPUDIATES OR FAILS TO MAKE A PAYMENT DUE BEFORE
4 DELIVERY, WHETHER FOR RENT, SECURITY, OR OTHERWISE UNDER THE
5 LEASE CONTRACT, OR FOR ANY OTHER REASON THE LESSOR HAS A RIGHT TO
6 WITHHOLD OR TAKE POSSESSION OF THE GOODS.

7 (2) IN PURSUING ITS REMEDIES UNDER SUBSECTION (1), THE
8 LESSOR MAY STOP DELIVERY UNTIL 1 OF THE FOLLOWING:

9 (A) RECEIPT OF THE GOODS BY THE LESSEE.

10 (B) ACKNOWLEDGMENT TO THE LESSEE BY ANY BAILEE OF THE GOODS,
11 EXCEPT A CARRIER, THAT THE BAILEE HOLDS THE GOODS FOR THE
12 LESSEE.

13 (C) AN ACKNOWLEDGMENT TO THE LESSEE BY A CARRIER VIA RESHIP-
14 MENT OR AS WAREHOUSEPERSON.

15 (3) TO STOP DELIVERY, A LESSOR SHALL SO NOTIFY AS TO ENABLE
16 THE BAILEE BY REASONABLE DILIGENCE TO PREVENT DELIVERY OF THE
17 GOODS.

18 (4) AFTER NOTIFICATION, THE BAILEE SHALL HOLD AND DELIVER
19 THE GOODS ACCORDING TO THE DIRECTIONS OF THE LESSOR, BUT THE
20 LESSOR IS LIABLE TO THE BAILEE FOR ANY ENSUING CHARGES OR
21 DAMAGES.

22 (5) A CARRIER WHO HAS ISSUED A NONNEGOTIABLE BILL OF LADING
23 IS NOT OBLIGED TO OBEY A NOTIFICATION TO STOP RECEIVED FROM A
24 PERSON OTHER THAN THE CONSIGNOR.

25 SEC. 2A527. (1) AFTER A DEFAULT BY A LESSEE UNDER THE LEASE
26 CONTRACT OF THE TYPE DESCRIBED IN SECTION 2A523(1) OR
27 2A523(3)(A), OR AFTER THE LESSOR REFUSES TO DELIVER OR TAKES

1 POSSESSION OF GOODS (SECTION 2A525 OR 2A526), OR, IF AGREED,
2 AFTER OTHER DEFAULT BY A LESSEE, THE LESSOR MAY DISPOSE OF THE
3 GOODS CONCERNED OR THE UNDELIVERED BALANCE THEREOF BY LEASE,
4 SALE, OR OTHERWISE.

5 (2) EXCEPT AS OTHERWISE PROVIDED WITH RESPECT TO DAMAGES
6 LIQUIDATED IN THE LEASE AGREEMENT (SECTION 2A504) OR OTHERWISE
7 DETERMINED PURSUANT TO AGREEMENT OF THE PARTIES (SECTIONS 1102(3)
8 AND 2A503), IF THE DISPOSITION IS BY LEASE AGREEMENT SUBSTAN-
9 TIALY SIMILAR TO THE ORIGINAL LEASE AGREEMENT AND THE NEW LEASE
10 AGREEMENT IS MADE IN GOOD FAITH AND IN A COMMERCIALY REASONABLE
11 MANNER, THE LESSOR MAY RECOVER FROM THE LESSEE AS DAMAGES (i)
12 ACCRUED AND UNPAID RENT AS OF THE DATE OF THE COMMENCEMENT OF THE
13 TERM OF THE NEW LEASE AGREEMENT, (ii) THE PRESENT VALUE, AS OF
14 THE SAME DATE, OF THE TOTAL RENT FOR THE THEN REMAINING LEASE
15 TERM OF THE ORIGINAL LEASE AGREEMENT MINUS THE PRESENT VALUE, AS
16 OF THE SAME DATE, OF THE RENT UNDER THE NEW LEASE AGREEMENT
17 APPLICABLE TO THAT PERIOD OF THE NEW LEASE TERM WHICH IS COM-
18 PARABLE TO THE THEN REMAINING TERM OF THE ORIGINAL LEASE AGREE-
19 MENT, AND (iii) ANY INCIDENTAL DAMAGES ALLOWED UNDER
20 SECTION 2A530, LESS EXPENSES SAVED IN CONSEQUENCE OF THE LESSEE'S
21 DEFAULT.

22 (3) IF THE LESSOR'S DISPOSITION IS BY LEASE AGREEMENT THAT
23 FOR ANY REASON DOES NOT QUALIFY FOR TREATMENT UNDER
24 SUBSECTION (2), OR IS BY SALE OR OTHERWISE, THE LESSOR MAY
25 RECOVER FROM THE LESSEE AS IF THE LESSOR HAD ELECTED NOT TO DIS-
26 POSE OF THE GOODS AND SECTION 2A528 GOVERNS.

1 (4) A SUBSEQUENT BUYER OR LESSEE WHO BUYS OR LEASES FROM THE
2 LESSOR IN GOOD FAITH FOR VALUE AS A RESULT OF A DISPOSITION UNDER
3 THIS SECTION TAKES THE GOODS FREE OF THE ORIGINAL LEASE CONTRACT
4 AND ANY RIGHTS OF THE ORIGINAL LESSEE EVEN THOUGH THE LESSOR
5 FAILS TO COMPLY WITH 1 OR MORE OF THE REQUIREMENTS OF THIS
6 ARTICLE.

7 (5) THE LESSOR IS NOT ACCOUNTABLE TO THE LESSEE FOR ANY
8 PROFIT MADE ON ANY DISPOSITION. A LESSEE WHO HAS RIGHTFULLY
9 REJECTED OR JUSTIFIABLY REVOKED ACCEPTANCE SHALL ACCOUNT TO THE
10 LESSOR FOR ANY EXCESS OVER THE AMOUNT OF THE LESSEE'S SECURITY
11 INTEREST (SECTION 2A508(5)).

12 SEC. 2A528. (1) EXCEPT AS OTHERWISE PROVIDED WITH RESPECT
13 TO DAMAGES LIQUIDATED IN THE LEASE AGREEMENT (SECTION 2A504) OR
14 OTHERWISE DETERMINED PURSUANT TO AGREEMENT OF THE PARTIES
15 (SECTIONS 1102(3) AND 2A503), IF A LESSOR ELECTS TO RETAIN THE
16 GOODS OR A LESSOR ELECTS TO DISPOSE OF THE GOODS AND DISPOSITION
17 IS BY LEASE AGREEMENT THAT FOR ANY REASON DOES NOT QUALIFY FOR
18 TREATMENT UNDER SECTION 2A527(2), OR IS BY SALE OR OTHERWISE, THE
19 LESSOR MAY RECOVER FROM THE LESSEE AS DAMAGES FOR A DEFAULT OF
20 THE TYPE DESCRIBED IN SECTION 2A523(1) OR 2A523(3)(A), OR, IF
21 AGREED, FOR OTHER DEFAULT OF THE LESSEE, (i) ACCRUED AND UNPAID
22 RENT AS OF THE DATE OF DEFAULT IF THE LESSEE HAS NEVER TAKEN POS-
23 SESSION OF THE GOODS, OR, IF THE LESSEE HAS TAKEN POSSESSION OF
24 THE GOODS, AS OF THE DATE THE LESSOR REPOSSESSES THE GOODS OR AN
25 EARLIER DATE ON WHICH THE LESSEE MAKES A TENDER OF THE GOODS TO
26 THE LESSOR, (ii) THE PRESENT VALUE AS OF THE DATE DETERMINED
27 UNDER THIS SUBSECTION OF THE TOTAL RENT FOR THE THEN REMAINING

1 LEASE TERM OF THE ORIGINAL LEASE AGREEMENT MINUS THE PRESENT
2 VALUE AS OF THE SAME DATE OF THE MARKET RENT AT THE PLACE WHERE
3 THE GOODS ARE LOCATED COMPUTED FOR THE SAME LEASE TERM, AND ANY
4 INCIDENTAL DAMAGES ALLOWED UNDER SECTION 2A530, LESS EXPENSES
5 SAVED IN CONSEQUENCE OF THE LESSEE'S DEFAULT.

6 (2) IF THE MEASURE OF DAMAGES PROVIDED IN SUBSECTION (1) IS
7 INADEQUATE TO PUT A LESSOR IN AS GOOD A POSITION AS PERFORMANCE
8 WOULD HAVE, THE MEASURE OF DAMAGES IS THE PRESENT VALUE OF THE
9 PROFIT, INCLUDING REASONABLE OVERHEAD, THE LESSOR WOULD HAVE MADE
10 FROM FULL PERFORMANCE BY THE LESSEE, TOGETHER WITH ANY INCIDENTAL
11 DAMAGES ALLOWED UNDER SECTION 2A530, DUE ALLOWANCE FOR COSTS REA-
12 SONABLY INCURRED AND DUE CREDIT FOR PAYMENTS OR PROCEEDS OF
13 DISPOSITION.

14 SEC. 2A529. (1) AFTER DEFAULT BY THE LESSEE UNDER THE LEASE
15 CONTRACT OF THE TYPE DESCRIBED IN SECTION 2A523(1) OR 2A523(3)(A)
16 OR, IF AGREED, AFTER OTHER DEFAULT BY THE LESSEE, IF THE LESSOR
17 COMPLIES WITH SUBSECTION (2), THE LESSOR MAY RECOVER FROM THE
18 LESSEE AS DAMAGES THE FOLLOWING:

19 (A) FOR GOODS ACCEPTED BY THE LESSEE AND NOT REPOSSESSED BY
20 OR TENDERED TO THE LESSOR, AND FOR CONFORMING GOODS LOST OR DAM-
21 AGED WITHIN A COMMERCIALY REASONABLE TIME AFTER RISK OF LOSS
22 PASSES TO THE LESSEE (SECTION 2A219), (i) ACCRUED AND UNPAID RENT
23 AS OF THE DATE OF ENTRY OF JUDGMENT IN FAVOR OF THE LESSOR, (ii)
24 THE PRESENT VALUE AS OF THE DATE OF DEFAULT OF THE RENT FOR THE
25 THEN REMAINING LEASE TERM OF THE LEASE AGREEMENT, AND (iii) ANY
26 INCIDENTAL DAMAGES ALLOWED UNDER SECTION 2A530, LESS EXPENSES
27 SAVED IN CONSEQUENCE OF THE LESSEE'S DEFAULT.

1 (B) FOR GOODS IDENTIFIED TO THE LEASE CONTRACT IF THE LESSOR
2 IS UNABLE AFTER REASONABLE EFFORT TO DISPOSE OF THEM AT A REASON-
3 ABLE PRICE OR THE CIRCUMSTANCES REASONABLY INDICATE THAT EFFORT
4 WILL BE UNAVAILING, (i) ACCRUED AND UNPAID RENT AS OF THE DATE OF
5 ENTRY OF JUDGMENT IN FAVOR OF THE LESSOR, (ii) THE PRESENT VALUE
6 AS OF THE SAME DATE OF THE RENT FOR THE THEN REMAINING LEASE TERM
7 OF THE LEASE AGREEMENT, AND (iii) ANY INCIDENTAL DAMAGES ALLOWED
8 UNDER SECTION 2A530, LESS EXPENSES SAVED IN CONSEQUENCE OF THE
9 LESSEE'S DEFAULT.

10 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), THE LESSOR SHALL
11 HOLD FOR THE LESSEE FOR THE REMAINING LEASE TERM OF THE LEASE
12 AGREEMENT ANY GOODS THAT HAVE BEEN IDENTIFIED TO THE LEASE CON-
13 TRACT AND ARE IN THE LESSOR'S CONTROL.

14 (3) THE LESSOR MAY DISPOSE OF THE GOODS AT ANY TIME BEFORE
15 COLLECTION OF THE JUDGMENT FOR DAMAGES OBTAINED PURSUANT TO
16 SUBSECTION (1). IF THE DISPOSITION IS BEFORE THE END OF THE
17 REMAINING LEASE TERM OF THE LEASE AGREEMENT, THE LESSOR'S RECOV-
18 ERY AGAINST THE LESSEE FOR DAMAGES IS GOVERNED BY SECTION 2A527
19 OR 2A528, AND THE LESSOR WILL CAUSE AN APPROPRIATE CREDIT TO BE
20 PROVIDED AGAINST A JUDGMENT FOR DAMAGES TO THE EXTENT THAT THE
21 AMOUNT OF THE JUDGMENT EXCEEDS THE RECOVERY AVAILABLE PURSUANT TO
22 SECTION 2A527 OR 2A528.

23 (4) PAYMENT OF THE JUDGMENT FOR DAMAGES OBTAINED PURSUANT TO
24 SUBSECTION (1) ENTITLES THE LESSEE TO USE AND POSSESSION OF THE
25 GOODS NOT THEN DISPOSED OF FOR THE REMAINING LEASE TERM OF AND IN
26 ACCORDANCE WITH THE LEASE AGREEMENT.

1 (5) AFTER A LESSEE HAS WRONGFULLY REJECTED OR REVOKED
2 ACCEPTANCE OF GOODS, HAS FAILED TO PAY RENT THEN DUE, OR HAS
3 REPUDIATED (SECTION 2A402), A LESSOR WHO IS HELD NOT ENTITLED TO
4 RENT UNDER THIS SECTION MUST NEVERTHELESS BE AWARDED DAMAGES FOR
5 NONACCEPTANCE UNDER SECTION 2A527 OR 2A528.

6 SEC. 2A530. INCIDENTAL DAMAGES TO AN AGGRIEVED LESSOR
7 INCLUDE ANY COMMERCIALY REASONABLE CHARGES, EXPENSES, OR COMMIS-
8 SIONS INCURRED IN STOPPING DELIVERY, IN THE TRANSPORTATION, CARE
9 AND CUSTODY OF GOODS AFTER THE LESSEE'S DEFAULT, IN CONNECTION
10 WITH RETURN OR DISPOSITION OF THE GOODS, OR OTHERWISE RESULTING
11 FROM THE DEFAULT.

12 SEC. 2A531. (1) IF A THIRD PARTY SO DEALS WITH GOODS THAT
13 HAVE BEEN IDENTIFIED TO A LEASE CONTRACT AS TO CAUSE ACTIONABLE
14 INJURY TO A PARTY TO THE LEASE CONTRACT, (i) THE LESSOR HAS A
15 RIGHT OF ACTION AGAINST THE THIRD PARTY, AND (ii) THE LESSEE ALSO
16 HAS A RIGHT OF ACTION AGAINST THE THIRD PARTY IF ANY OF THE FOL-
17 LOWING APPLY TO THE LESSEE:

18 (A) HAS A SECURITY INTEREST IN THE GOODS.

19 (B) HAS AN INSURABLE INTEREST IN THE GOODS.

20 (C) BEARS THE RISK OF LOSS UNDER THE LEASE CONTRACT OR HAS
21 SINCE THE INJURY ASSUMED THAT RISK AS AGAINST THE LESSOR AND THE
22 GOODS HAVE BEEN CONVERTED OR DESTROYED.

23 (2) IF AT THE TIME OF THE INJURY THE PARTY PLAINTIFF DID NOT
24 BEAR THE RISK OF LOSS AS AGAINST THE OTHER PARTY TO THE LEASE
25 CONTRACT AND THERE IS NO ARRANGEMENT BETWEEN THEM FOR DISPOSITION
26 OF THE RECOVERY, HIS OR HER SUIT OR SETTLEMENT, SUBJECT TO HIS OR

1 HER OWN INTEREST, IS AS A FIDUCIARY FOR THE OTHER PARTY TO THE
2 LEASE CONTRACT.

3 (3) EITHER PARTY WITH THE CONSENT OF THE OTHER MAY SUE FOR
4 THE BENEFIT OF WHOM IT MAY CONCERN.

5 SEC. 2A532. IN ADDITION TO ANY OTHER RECOVERY PERMITTED BY
6 THIS ARTICLE OR OTHER LAW, THE LESSOR MAY RECOVER FROM THE LESSEE
7 AN AMOUNT THAT WILL FULLY COMPENSATE THE LESSOR FOR ANY LOSS OF
8 OR DAMAGE TO THE LESSOR'S RESIDUAL INTEREST IN THE GOODS CAUSED
9 BY THE DEFAULT OF THE LESSEE.

10 ARTICLE 3

11 ~~COMMERCIAL PAPER~~ NEGOTIABLE INSTRUMENTS

12 PART 1. ~~SHORT TITLE, FORM, AND INTERPRETATION~~ GENERAL

13 PROVISIONS AND DEFINITIONS

14 Sec. 3101. This article shall be known and may be cited as
15 "uniform commercial code-- ~~commercial paper~~ NEGOTIABLE
16 INSTRUMENTS".

17 Sec. 3102. ~~(1) In this article unless the context other-~~
18 ~~wise requires:~~

19 (a) ~~"Issue" means the first delivery of an instrument to a~~
20 ~~holder or a remitter.~~

21 (b) ~~An "order" is a direction to pay and must be more than~~
22 ~~an authorization or request. It must identify the person to pay~~
23 ~~with reasonable certainty. It may be addressed to one or more~~
24 ~~such persons jointly or in the alternative but not in~~
25 ~~succession.~~

26 (c) ~~A "promise" is an undertaking to pay and must be more~~
27 ~~than an acknowledgment of an obligation.~~

~~(d) "Secondary party" means a drawer or endorser.~~

~~(e) "Instrument" means a negotiable instrument.~~

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

~~"Acceptance".~~

~~Section 3410.~~

~~"Accommodation party".~~

~~Section 3415.~~

~~"Alteration".~~

~~Section 3407.~~

~~"Certificate of deposit".~~

~~Section 3104.~~

~~"Certification".~~

~~Section 3411.~~

~~"Check".~~

~~Section 3104.~~

~~"Definite time".~~

~~Section 3109.~~

~~"Dishonor".~~

~~Section 3507.~~

~~"Draft".~~

~~Section 3104.~~

~~"Holder in due course".~~

~~Section 3302.~~

~~"Negotiation".~~

~~Section 3202.~~

~~"Note".~~

~~Section 3104.~~

~~"Notice of dishonor".~~

~~Section 3508.~~

~~"On demand".~~

~~Section 3108.~~

~~"Presentment".~~

~~Section 3504.~~

~~"Protest".~~

~~Section 3509.~~

~~"Restrictive indorsement".~~

~~Section 3205.~~

~~"Signature".~~

~~Section 3401.~~

~~(3) The following definitions in other articles apply to this article:~~

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14 (1) THIS ARTICLE APPLIES TO NEGOTIABLE
15 INSTRUMENTS. IT DOES NOT APPLY TO MONEY, TO PAYMENT ORDERS GOV-
16 ERNED BY ARTICLE 4A, OR TO SECURITIES GOVERNED BY ARTICLE 8.
17 (2) IF THERE IS CONFLICT BETWEEN THIS ARTICLE AND ARTICLE 4
18 OR 9, ARTICLES 4 AND 9 GOVERN.
19 (3) REGULATIONS OF THE BOARD OF GOVERNORS OF THE FEDERAL
20 RESERVE SYSTEM AND OPERATING CIRCULARS OF THE FEDERAL RESERVE
21 BANKS SUPERSEDE ANY INCONSISTENT PROVISION OF THIS ARTICLE TO THE
22 EXTENT OF THE INCONSISTENCY.
23 Sec. 3103.

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26

1 ~~and secured transactions (article 9).~~ (1) AS USED IN THIS

2 ARTICLE:

3 (A) "ACCEPTOR" MEANS A DRAWEE WHO HAS ACCEPTED A DRAFT.

4 (B) "DRAWEE" MEANS A PERSON ORDERED IN A DRAFT TO MAKE
5 PAYMENT.

6 (C) "DRAWER" MEANS A PERSON WHO SIGNS OR IS IDENTIFIED IN A
7 DRAFT AS A PERSON ORDERING PAYMENT.

8 (D) "GOOD FAITH" MEANS HONESTY IN FACT AND THE OBSERVANCE OF
9 REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING.

10 (E) "MAKER" MEANS A PERSON WHO SIGNS OR IS IDENTIFIED IN A
11 NOTE AS A PERSON UNDERTAKING TO PAY.

12 (F) "ORDER" MEANS A WRITTEN INSTRUCTION TO PAY MONEY SIGNED
13 BY THE PERSON GIVING THE INSTRUCTION. THE INSTRUCTION MAY BE
14 ADDRESSED TO ANY PERSON, INCLUDING THE PERSON GIVING THE INSTRUC-
15 TION, OR TO 1 OR MORE PERSONS JOINTLY OR IN THE ALTERATIVE BUT
16 NOT IN SUCCESSION. AN AUTHORIZATION TO PAY IS NOT AN ORDER
17 UNLESS THE PERSON AUTHORIZED TO PAY IS ALSO INSTRUCTED TO PAY.

18 (G) "ORDINARY CARE" IN THE CASE OF A PERSON ENGAGED IN BUSI-
19 NESS MEANS OBSERVANCE OF REASONABLE COMMERCIAL STANDARDS, PRE-
20 VAILING IN THE AREA IN WHICH THE PERSON IS LOCATED, WITH RESPECT
21 TO THE BUSINESS IN WHICH THE PERSON IS ENGAGED. IN THE CASE OF A
22 BANK THAT TAKES AN INSTRUMENT FOR PROCESSING FOR COLLECTION OR
23 PAYMENT BY AUTOMATED MEANS, REASONABLE COMMERCIAL STANDARDS DO
24 NOT REQUIRE THE BANK TO EXAMINE THE INSTRUMENT IF THE FAILURE TO
25 EXAMINE DOES NOT VIOLATE THE BANK'S PRESCRIBED PROCEDURES AND THE
26 BANK'S PROCEDURES DO NOT VARY UNREASONABLY FROM GENERAL BANKING
27 USAGE NOT DISAPPROVED BY THIS ARTICLE OR ARTICLE 4.

1 (H) "PARTY" MEANS A PARTY TO AN INSTRUMENT.

2 (I) "PROMISE" MEANS A WRITTEN UNDERTAKING TO PAY MONEY
3 SIGNED BY THE PERSON UNDERTAKING TO PAY. AN ACKNOWLEDGMENT OF AN
4 OBLIGATION BY THE OBLIGOR IS NOT A PROMISE UNLESS THE OBLIGOR
5 ALSO UNDERTAKES TO PAY THE OBLIGATION.

6 (J) "PROVE" WITH RESPECT TO A FACT MEANS TO MEET THE BURDEN
7 OF ESTABLISHING THE FACT (SECTION 1201(8)).

8 (K) "REMITTER" MEANS A PERSON WHO PURCHASES AN INSTRUMENT
9 FROM ITS ISSUER IF THE INSTRUMENT IS PAYABLE TO AN IDENTIFIED
10 PERSON OTHER THAN THE PURCHASER.

11 (2) OTHER DEFINITIONS APPLYING TO THIS ARTICLE AND THE SEC-
12 TIONS IN WHICH THEY APPEAR ARE AS FOLLOWS:

13	"ACCEPTANCE"	SECTION 3409.
14	"ACCOMMODATED PARTY"	SECTION 3419.
15	"ACCOMMODATION PARTY"	SECTION 3419.
16	"ALTERATION"	SECTION 3407.
17	"ANOMALOUS ENDORSEMENT"	SECTION 3205.
18	"BLANK ENDORSEMENT"	SECTION 3205.
19	"CASHIER'S CHECK"	SECTION 3104.
20	"CERTIFICATE OF DEPOSIT"	SECTION 3104.
21	"CERTIFIED CHECK"	SECTION 3409.
22	"CHECK"	SECTION 3104.
23	"CONSIDERATION"	SECTION 3303.
24	"DRAFT"	SECTION 3104.
25	"ENDORSEMENT"	SECTION 3204.
26	"ENDORSER"	SECTION 3204.

1	"HOLDER IN DUE COURSE"	SECTION 3304.
2	"INCOMPLETE INSTRUMENT"	SECTION 3115.
3	"INSTRUMENT"	SECTION 3104.
4	"ISSUE"	SECTION 3105.
5	"ISSUER"	SECTION 3105.
6	"NEGOTIABLE INSTRUMENT"	SECTION 3104.
7	"NEGOTIATION"	SECTION 3201.
8	"NOTE"	SECTION 3104.
9	"PAYABLE AT A DEFINITE TIME"	SECTION 3108.
10	"PAYABLE ON DEMAND"	SECTION 3108.
11	"PAYABLE TO BEARER"	SECTION 3109.
12	"PAYABLE TO ORDER"	SECTION 3109.
13	"PAYMENT"	SECTION 3602.
14	"PERSON ENTITLED TO ENFORCE"	SECTION 3301.
15	"PRESENTMENT"	SECTION 3501.
16	"REACQUISITION"	SECTION 3207.
17	"SPECIAL ENDORSEMENT"	SECTION 3205.
18	"TELLER'S CHECK"	SECTION 3104.
19	"TRANSFER OF INSTRUMENT"	SECTION 3203.
20	"TRAVELER'S CHECK"	SECTION 3104.
21	"VALUE"	SECTION 3303.
22	(3) THE FOLLOWING DEFINITIONS IN OTHER ARTICLES APPLY TO	
23	THIS ARTICLE:	
24	"BANK"	SECTION 4105.
25	"BANKING DAY"	SECTION 4104.
26	"CLEARING HOUSE"	SECTION 4104.

1	"COLLECTING BANK"	SECTION 4105.
2	"DEPOSITARY BANK"	SECTION 4105.
3	"DOCUMENTARY DRAFT"	SECTION 4104.
4	"INTERMEDIARY BANK"	SECTION 4105.
5	"ITEM"	SECTION 4104.
6	"PAYOR BANK"	SECTION 4105.
7	"SUSPENDS PAYMENTS"	SECTION 4104.

8 (4) IN ADDITION, ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND
 9 PRINCIPLES OF CONSTRUCTION AND INTERPRETATION APPLICABLE THROUGH-
 10 OUT THIS ARTICLE.

11 Sec. 3104. ~~(1) Any writing to be a negotiable instrument~~
 12 ~~within this article must~~

13 ~~(a) be signed by the maker or drawer; and~~

14 ~~(b) contain an unconditional promise or order to pay a sum~~
 15 ~~certain in money and no other promise, order, obligation or power~~
 16 ~~given by the maker or drawer except as authorized by this arti-~~
 17 ~~cle; and~~

18 ~~(c) be payable on demand or at a definite time; and~~

19 ~~(d) be payable to order or to bearer.~~

20 ~~(2) A writing which complies with the requirements of this~~
 21 ~~section is~~

22 ~~(a) a "draft" ("bill of exchange") if it is an order;~~

23 ~~(b) a "check" if it is a draft drawn on a bank and payable~~
 24 ~~on demand;~~

25 ~~(c) a "certificate of deposit" if it is an acknowledgment by~~
 26 ~~a bank of receipt of money with an engagement to repay it;~~

1 ~~(d) a "note" if it is a promise other than a certificate of~~
2 ~~deposit.~~

3 ~~(3) As used in other articles of this act, and as the con-~~
4 ~~text may require, the terms "draft", "check", "certificate of~~
5 ~~deposit" and "note" may refer to instruments which are not nego-~~
6 ~~tiabale within this article as well as to instruments which are so~~
7 ~~negotiable.~~ (1) EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (4),
8 "NEGOTIABLE INSTRUMENT" MEANS AN UNCONDITIONAL PROMISE OR ORDER
9 TO PAY A FIXED AMOUNT OF MONEY, WITH OR WITHOUT INTEREST OR OTHER
10 CHARGES DESCRIBED IN THE PROMISE OR ORDER, IF ALL OF THE FOLLOW-
11 ING APPLY:

12 (A) IT IS PAYABLE TO BEARER OR TO ORDER AT THE TIME IT IS
13 ISSUED OR FIRST COMES INTO POSSESSION OF A HOLDER.

14 (B) IT IS PAYABLE ON DEMAND OR AT A DEFINITE TIME.

15 (C) IT DOES NOT STATE ANY OTHER UNDERTAKING OR INSTRUCTION
16 BY THE PERSON PROMISING OR ORDERING PAYMENT TO DO ANY ACT IN
17 ADDITION TO THE PAYMENT OF MONEY, BUT THE PROMISE OR ORDER MAY
18 CONTAIN AN UNDERTAKING OR POWER TO GIVE, MAINTAIN, OR PROTECT
19 COLLATERAL TO SECURE PAYMENT, AN AUTHORIZATION OR POWER TO THE
20 HOLDER TO CONFESS JUDGMENT OR REALIZE ON OR DISPOSE OF COLLATER-
21 AL, OR A WAIVER OF THE BENEFIT OF ANY LAW INTENDED FOR THE ADVAN-
22 TAGE OR PROTECTION OF AN OBLIGOR.

23 (2) "INSTRUMENT" MEANS A NEGOTIABLE INSTRUMENT.

24 (3) AN ORDER THAT MEETS ALL OF THE REQUIREMENTS OF
25 SUBSECTION (1), EXCEPT SUBDIVISION (A), AND OTHERWISE FALLS
26 WITHIN THE DEFINITION OF "CHECK" IN SUBSECTION (6) IS A
27 NEGOTIABLE INSTRUMENT AND A CHECK.

1 (4) A PROMISE OR ORDER OTHER THAN A CHECK IS NOT AN
2 INSTRUMENT IF, AT THE TIME IT IS ISSUED OR FIRST COMES INTO POS-
3 SESSION OF A HOLDER, IT CONTAINS A CONSPICUOUS STATEMENT, HOWEVER
4 EXPRESSED, TO THE EFFECT THAT THE PROMISE OR ORDER IS NOT NEGO-
5 TIABLE OR IS NOT AN INSTRUMENT GOVERNED BY THIS ARTICLE.

6 (5) AN INSTRUMENT IS A "NOTE" IF IT IS A PROMISE AND IS A
7 "DRAFT" IF IT IS AN ORDER. IF AN INSTRUMENT FALLS WITHIN THE
8 DEFINITION OF BOTH "NOTE" AND "DRAFT", A PERSON ENTITLED TO
9 ENFORCE THE INSTRUMENT MAY TREAT IT AS EITHER.

10 (6) "CHECK" MEANS A DRAFT, OTHER THAN A DOCUMENTARY DRAFT,
11 PAYABLE ON DEMAND AND DRAWN ON A BANK OR A CASHIER'S CHECK OR
12 TELLER'S CHECK. AN INSTRUMENT MAY BE A CHECK EVEN THOUGH IT IS
13 DESCRIBED ON ITS FACE BY ANOTHER TERM, SUCH AS "MONEY ORDER".

14 (7) "CASHIER'S CHECK" MEANS A DRAFT WITH RESPECT TO WHICH
15 THE DRAWER AND DRAWEE ARE THE SAME BANK OR BRANCHES OF THE SAME
16 BANK.

17 (8) "TELLER'S CHECK" MEANS A DRAFT DRAWN BY A BANK ON
18 ANOTHER BANK, OR PAYABLE AT OR THROUGH A BANK.

19 (9) "TRAVELER'S CHECK" MEANS AN INSTRUMENT THAT IS PAYABLE
20 ON DEMAND, IS DRAWN ON OR PAYABLE AT OR THROUGH A BANK, IS DESIG-
21 NATED BY THE TERM "TRAVELER'S CHECK" OR BY A SUBSTANTIALLY SIMI-
22 LAR TERM, AND REQUIRES, AS A CONDITION TO PAYMENT, A COUNTERSIG-
23 NATURE BY A PERSON WHOSE SPECIMEN SIGNATURE APPEARS ON THE
24 INSTRUMENT.

25 (10) "CERTIFICATE OF DEPOSIT" MEANS AN INSTRUMENT CONTAINING
26 AN ACKNOWLEDGMENT BY A BANK THAT A SUM OF MONEY HAS BEEN RECEIVED

1 BY THE BANK AND A PROMISE BY THE BANK TO REPAY THE SUM OF MONEY.

2 A CERTIFICATE OF DEPOSIT IS A NOTE OF THE BANK.

3 Sec. 3105. ~~(1) A promise or order otherwise unconditional~~

4 ~~is not made conditional by the fact that the instrument~~

5 ~~(a) is subject to implied or constructive conditions; or~~

6 ~~(b) states its consideration, whether performed or promised,~~

7 ~~or the transaction which gave rise to the instrument, or that the~~

8 ~~promise or order is made or the instrument matures in accordance~~

9 ~~with or "as per" such transaction; or~~

10 ~~(c) refers to or states that it arises out of a separate~~

11 ~~agreement or refers to a separate agreement for rights as to pre-~~

12 ~~payment or acceleration; or~~

13 ~~(d) states that it is drawn under a letter of credit; or~~

14 ~~(e) states that it is secured, whether by mortgage, reserva-~~

15 ~~tion of title or otherwise; or~~

16 ~~(f) indicates a particular account to be debited or any~~

17 ~~other fund or source from which reimbursement is expected; or~~

18 ~~(g) is limited to payment out of a particular fund or the~~

19 ~~proceeds of a particular source, if the instrument is issued by a~~

20 ~~government or governmental agency or unit; or~~

21 ~~(h) is limited to payment out of the entire assets of a~~

22 ~~partnership, unincorporated association, trust or estate by or on~~

23 ~~behalf of which the instrument is issued.~~

24 ~~(2) A promise or order is not unconditional if the instru-~~

25 ~~ment~~

26 ~~(a) states that it is subject to or governed by any other~~

27 ~~agreement; or~~

1 ~~(b) states that it is to be paid only out of a particular~~
2 ~~fund or source except as provided in this section.~~ (1) "ISSUE"
3 MEANS THE FIRST DELIVERY OF AN INSTRUMENT BY THE MAKER OR DRAWER,
4 WHETHER TO A HOLDER OR NONHOLDER, FOR THE PURPOSE OF GIVING
5 RIGHTS ON THE INSTRUMENT TO ANY PERSON.

6 (2) AN UNISSUED INSTRUMENT, OR AN UNISSUED INCOMPLETE
7 INSTRUMENT THAT IS COMPLETED, IS BINDING ON THE MAKER OR DRAWER,
8 BUT NONISSUANCE IS A DEFENSE. AN INSTRUMENT THAT IS CONDITION-
9 ALLY ISSUED OR IS ISSUED FOR A SPECIAL PURPOSE IS BINDING ON THE
10 MAKER OR DRAWER, BUT FAILURE OF THE CONDITION OR SPECIAL PURPOSE
11 TO BE FULFILLED IS A DEFENSE.

12 (3) "ISSUER" APPLIES TO ISSUED AND UNISSUED INSTRUMENTS AND
13 MEANS A MAKER OR DRAWER OF AN INSTRUMENT.

14 Sec. 3106. ~~(+) The sum payable is a sum certain even~~
15 ~~though it is to be paid~~

16 ~~(a) with stated interest or by stated installments; or~~

17 ~~(b) with stated different rates of interest before and after~~
18 ~~default or a specified date; or~~

19 ~~(c) with a stated discount or addition if paid before or~~
20 ~~after the date fixed for payment; or~~

21 ~~(d) with exchange or less exchange, whether at a fixed rate~~
22 ~~or at the current rate; or~~

23 ~~(e) with costs of collection or an attorney's fee or both~~
24 ~~upon default.~~

25 ~~(2) Nothing in this section shall validate any term which is~~
26 ~~otherwise illegal.~~ (1) EXCEPT AS PROVIDED IN THIS SECTION, FOR

1 THE PURPOSES OF SECTION 3104(1), A PROMISE OR ORDER IS
2 UNCONDITIONAL UNLESS IT STATES:

3 (A) AN EXPRESS CONDITION TO PAYMENT.

4 (B) THAT THE PROMISE OR ORDER IS SUBJECT TO OR GOVERNED BY
5 ANOTHER WRITING.

6 (C) THAT RIGHTS OR OBLIGATIONS WITH RESPECT TO THE PROMISE
7 OR ORDER ARE STATED IN ANOTHER WRITING. A REFERENCE TO ANOTHER
8 WRITING DOES NOT OF ITSELF MAKE THE PROMISE OR ORDER
9 CONDITIONAL.

10 (2) A PROMISE OR ORDER IS NOT MADE CONDITIONAL:

11 (A) BY A REFERENCE TO ANOTHER WRITING FOR A STATEMENT OF
12 RIGHTS WITH RESPECT TO COLLATERAL, PREPAYMENT, OR ACCELERATION.

13 (B) BECAUSE PAYMENT IS LIMITED TO RESORT TO A PARTICULAR
14 FUND OR SOURCE.

15 (3) IF A PROMISE OR ORDER REQUIRES, AS A CONDITION TO PAY-
16 MENT, A COUNTERSIGNATURE BY A PERSON WHOSE SPECIMEN SIGNATURE
17 APPEARS ON THE PROMISE OR ORDER, THE CONDITION DOES NOT MAKE THE
18 PROMISE OR ORDER CONDITIONAL FOR THE PURPOSES OF
19 SECTION 3104(1). IF THE PERSON WHOSE SPECIMEN SIGNATURE APPEARS
20 ON AN INSTRUMENT FAILS TO COUNTERSIGN THE INSTRUMENT, THE FAILURE
21 TO COUNTERSIGN IS A DEFENSE TO THE OBLIGATION OF THE ISSUER, BUT
22 THE FAILURE DOES NOT PREVENT A TRANSFEREE OF THE INSTRUMENT FROM
23 BECOMING A HOLDER OF THE INSTRUMENT.

24 (4) IF A PROMISE OR ORDER AT THE TIME IT IS ISSUED OR FIRST
25 COMES INTO POSSESSION OF A HOLDER CONTAINS A STATEMENT, REQUIRED
26 BY APPLICABLE STATUTORY OR ADMINISTRATIVE LAW, TO THE EFFECT THAT
27 THE RIGHTS OF A HOLDER OR TRANSFEREE ARE SUBJECT TO CLAIMS OR

1 DEFENSES THAT THE ISSUER COULD ASSERT AGAINST THE ORIGINAL PAYEE,
2 THE PROMISE OR ORDER IS NOT THEREBY MADE CONDITIONAL FOR THE PUR-
3 POSES OF SECTION 3104(1); BUT IF THE PROMISE OR ORDER IS AN
4 INSTRUMENT, THERE CANNOT BE A HOLDER IN DUE COURSE OF THE
5 INSTRUMENT.

6 Sec. 3107. ~~(1) An instrument is payable in money if the~~
7 ~~medium of exchange in which it is payable is money at the time~~
8 ~~the instrument is made. An instrument payable in "currency" or~~
9 ~~"current funds" is payable in money.~~

10 ~~(2) A promise or order to pay a sum stated in a foreign cur-~~
11 ~~rency is for a sum certain in money and, unless a different~~
12 ~~medium of payment is specified in the instrument, may be satis-~~
13 ~~fied by payment of that number of dollars which the stated for-~~
14 ~~eign currency will purchase at the buying sight rate for that~~
15 ~~currency on the day on which the instrument is payable or, if~~
16 ~~payable on demand, on the day of demand. If such an instrument~~
17 ~~specifies a foreign currency as the medium of payment the instru-~~
18 ~~ment is payable in that currency.~~ UNLESS THE INSTRUMENT OTHER-
19 WISE PROVIDES, AN INSTRUMENT THAT STATES THE AMOUNT PAYABLE IN
20 FOREIGN MONEY MAY BE PAID IN THE FOREIGN MONEY OR IN AN EQUIVA-
21 LENT AMOUNT IN DOLLARS CALCULATED BY USING THE CURRENT
22 BANK-OFFERED SPOT RATE AT THE PLACE OF PAYMENT FOR THE PURCHASE
23 OF DOLLARS ON THE DAY ON WHICH THE INSTRUMENT IS PAID.

24 Sec. 3108. ~~Instruments payable on demand include those~~
25 ~~payable at sight or on presentation and those in which no time~~
26 ~~for payment is stated.~~ (1) A PROMISE OR ORDER IS "PAYABLE ON
27 DEMAND" IF IT:

1 (A) STATES THAT IT IS PAYABLE ON DEMAND OR AT SIGHT, OR
2 OTHERWISE INDICATES THAT IT IS PAYABLE AT THE WILL OF THE
3 HOLDER.

4 (B) DOES NOT STATE ANY TIME OF PAYMENT.

5 (2) A PROMISE OR ORDER IS "PAYABLE AT A DEFINITE TIME" IF IT
6 IS PAYABLE ON ELAPSE OF A DEFINITE PERIOD OF TIME AFTER SIGHT OR
7 ACCEPTANCE OR AT A FIXED DATE OR DATES OR AT A TIME OR TIMES
8 READILY ASCERTAINABLE AT THE TIME THE PROMISE OR ORDER IS ISSUED,
9 SUBJECT TO RIGHTS OF:

10 (A) PREPAYMENT.

11 (B) ACCELERATION.

12 (C) EXTENSION AT THE OPTION OF THE HOLDER.

13 (D) EXTENSION TO A FURTHER DEFINITE TIME AT THE OPTION OF
14 THE MAKER OR ACCEPTOR OR AUTOMATICALLY UPON OR AFTER A SPECIFIED
15 ACT OR EVENT.

16 (3) IF AN INSTRUMENT, PAYABLE AT A FIXED DATE, IS ALSO PAY-
17 ABLE UPON DEMAND MADE BEFORE THE FIXED DATE, THE INSTRUMENT IS
18 PAYABLE ON DEMAND UNTIL THE FIXED DATE AND, IF DEMAND FOR PAYMENT
19 IS NOT MADE BEFORE THAT DATE, BECOMES PAYABLE AT A DEFINITE TIME
20 ON THE FIXED DATE.

21 Sec. 3109. ~~-(1) An instrument is payable at a definite time~~
22 ~~if by its terms it is payable~~

23 ~~(a) on or before a stated date or at a fixed period after a~~
24 ~~stated date; or~~

25 ~~(b) at a fixed period after sight; or~~

26 ~~(c) at a definite time subject to any acceleration; or~~

1 ~~(d) at a definite time subject to extension at the option of~~
2 ~~the holder, or to extension to a further definite time at the~~
3 ~~option of the maker or acceptor or automatically upon or after a~~
4 ~~specified act or event.~~

5 ~~(2) An instrument which by its terms is otherwise payable~~
6 ~~only upon an act or event uncertain as to time of occurrence is~~
7 ~~not payable at a definite time even though the act or event has~~
8 ~~occurred.~~ (1) A PROMISE OR ORDER IS PAYABLE TO THE BEARER IF IT
9 DOES ANY OF THE FOLLOWING:

10 (A) STATES THAT IT IS PAYABLE TO BEARER OR TO THE ORDER OF
11 BEARER OR OTHERWISE INDICATES THAT THE PERSON IN POSSESSION OF
12 THE PROMISE OR ORDER IS ENTITLED TO PAYMENT.

13 (B) DOES NOT STATE A PAYEE.

14 (C) STATES THAT IT IS PAYABLE TO OR TO THE ORDER OF CASH OR
15 OTHERWISE INDICATES THAT IT IS NOT PAYABLE TO AN IDENTIFIED
16 PERSON.

17 (2) A PROMISE OR ORDER THAT IS NOT PAYABLE TO BEARER IS PAY-
18 ABLE TO ORDER IF IT IS PAYABLE:

19 (A) TO THE ORDER OF AN IDENTIFIED PERSON.

20 (B) TO AN IDENTIFIED PERSON OR ORDER. A PROMISE OR ORDER
21 THAT IS PAYABLE TO ORDER IS PAYABLE TO THE IDENTIFIED PERSON.

22 (3) AN INSTRUMENT PAYABLE TO BEARER MAY BECOME PAYABLE TO AN
23 IDENTIFIED PERSON IF IT IS SPECIALLY ENDORSED PURSUANT TO
24 SECTION 3205(1). AN INSTRUMENT PAYABLE TO AN IDENTIFIED PERSON
25 MAY BECOME PAYABLE TO BEARER IF IT IS ENDORSED IN BLANK PURSUANT
26 TO SECTION 3205(2).

1 Sec. 3110. ~~(1) An instrument is payable to order when by~~
2 ~~its terms it is payable to the order or assigns of any person~~
3 ~~therein specified with reasonable certainty, or to him or his~~
4 ~~order, or when it is conspicuously designated on its face as~~
5 ~~"exchange" or the like and names a payee. It may be payable to~~
6 ~~the order of~~

7 ~~(a) the maker or drawer; or~~

8 ~~(b) the drawee; or~~

9 ~~(c) a payee who is not maker, drawer or drawee; or~~

10 ~~(d) two or more payees together or in the alternative; or~~

11 ~~(e) an estate, trust or fund, in which case it is payable to~~
12 ~~the order of the representative of such estate, trust or fund or~~
13 ~~his successors; or~~

14 ~~(f) an office, or an officer by his title as such in which~~
15 ~~case it is payable to the principal but the incumbent of the~~
16 ~~office or his successors may act as if he or they were the~~
17 ~~holder; or~~

18 ~~(g) a partnership or unincorporated association, in which~~
19 ~~case it is payable to the partnership or association and may be~~
20 ~~indorsed or transferred by any person thereto authorized.~~

21 ~~(2) An instrument not payable to order is not made so pay-~~
22 ~~able by such words as "payable upon return of this instrument~~
23 ~~properly indorsed".~~

24 ~~(3) An instrument made payable both to order and to bearer~~
25 ~~is payable to order unless the bearer words are handwritten or~~
26 ~~typewritten.~~ (1) THE PERSON TO WHOM AN INSTRUMENT IS INITIALLY

27 PAYABLE IS DETERMINED BY THE INTENT OF THE PERSON, WHETHER OR NOT

1 AUTHORIZED, SIGNING AS, OR IN THE NAME OR BEHALF OF, THE ISSUER
2 OF THE INSTRUMENT. THE INSTRUMENT IS PAYABLE TO THE PERSON
3 INTENDED BY THE SIGNER EVEN IF THAT PERSON IS IDENTIFIED IN THE
4 INSTRUMENT BY A NAME OR OTHER IDENTIFICATION THAT IS NOT THAT OF
5 THE INTENDED PERSON. IF MORE THAN 1 PERSON SIGNS IN THE NAME OR
6 BEHALF OF THE ISSUER OF AN INSTRUMENT AND ALL THE SIGNERS DO NOT
7 INTEND THE SAME PERSON AS PAYEE, THE INSTRUMENT IS PAYABLE TO ANY
8 PERSON INTENDED BY 1 OR MORE OF THE SIGNERS.

9 (2) IF THE SIGNATURE OF THE ISSUER OF AN INSTRUMENT IS MADE
10 BY AUTOMATED MEANS, SUCH AS A CHECK-WRITING MACHINE, THE PAYEE OF
11 THE INSTRUMENT IS DETERMINED BY THE INTENT OF THE PERSON WHO SUP-
12 PLIED THE NAME OR IDENTIFICATION OF THE PAYEE, WHETHER OR NOT
13 AUTHORIZED TO DO SO.

14 (3) A PERSON TO WHOM AN INSTRUMENT IS PAYABLE MAY BE IDENTI-
15 FIED IN ANY WAY, INCLUDING BY NAME, IDENTIFYING NUMBER, OFFICE,
16 OR ACCOUNT NUMBER. FOR THE PURPOSE OF DETERMINING THE HOLDER OF
17 AN INSTRUMENT, THE FOLLOWING RULES APPLY:

18 (A) IF AN INSTRUMENT IS PAYABLE TO AN ACCOUNT AND THE
19 ACCOUNT IS IDENTIFIED ONLY BY NUMBER, THE INSTRUMENT IS PAYABLE
20 TO THE PERSON TO WHOM THE ACCOUNT IS PAYABLE. IF AN INSTRUMENT
21 IS PAYABLE TO AN ACCOUNT IDENTIFIED BY NUMBER AND BY THE NAME OF
22 A PERSON, THE INSTRUMENT IS PAYABLE TO THE NAMED PERSON, WHETHER
23 OR NOT THAT PERSON IS THE OWNER OF THE ACCOUNT IDENTIFIED BY
24 NUMBER.

25 (B) IF AN INSTRUMENT IS PAYABLE TO ANY OF THE FOLLOWING:

26 (i) A TRUST, AN ESTATE, OR A PERSON DESCRIBED AS TRUSTEE OR
27 REPRESENTATIVE OF A TRUST OR ESTATE, THE INSTRUMENT IS PAYABLE TO

1 THE TRUSTEE, THE REPRESENTATIVE, OR A SUCCESSOR OF EITHER,
 2 WHETHER OR NOT THE BENEFICIARY OR ESTATE IS ALSO NAMED.

3 (ii) A PERSON DESCRIBED AS AGENT OR SIMILAR REPRESENTATIVE
 4 OF A NAMED OR IDENTIFIED PERSON, THE INSTRUMENT IS PAYABLE TO THE
 5 REPRESENTED PERSON, THE REPRESENTATIVE, OR A SUCCESSOR OF THE
 6 REPRESENTATIVE.

7 (iii) A FUND OR ORGANIZATION THAT IS NOT A LEGAL ENTITY, THE
 8 INSTRUMENT IS PAYABLE TO A REPRESENTATIVE OF THE MEMBERS OF THE
 9 FUND OR ORGANIZATION.

10 (iv) AN OFFICE OR TO A PERSON DESCRIBED AS HOLDING AN
 11 OFFICE, THE INSTRUMENT IS PAYABLE TO THE NAMED PERSON, THE INCUM-
 12 BENT OF THE OFFICE, OR A SUCCESSOR TO THE INCUMBENT.

13 (4) IF AN INSTRUMENT IS PAYABLE TO 2 OR MORE PERSONS ALTER-
 14 NATIVELY, IT IS PAYABLE TO ANY OF THEM AND MAY BE NEGOTIATED,
 15 DISCHARGED, OR ENFORCED BY ANY OR ALL OF THEM IN POSSESSION OF
 16 THE INSTRUMENT. IF AN INSTRUMENT IS PAYABLE TO 2 OR MORE PERSONS
 17 NOT ALTERNATIVELY, IT IS PAYABLE TO ALL OF THEM AND MAY BE NEGO-
 18 TIATED, DISCHARGED, OR ENFORCED ONLY BY ALL OF THEM. IF AN
 19 INSTRUMENT PAYABLE TO 2 OR MORE PERSONS IS AMBIGUOUS AS TO
 20 WHETHER IT IS PAYABLE TO THE PERSONS ALTERNATIVELY, THE INSTRU-
 21 MENT IS PAYABLE TO THE PERSONS ALTERNATIVELY.

22 Sec. 3111. ~~An instrument is payable to bearer when by its~~
 23 ~~terms it is payable to~~

24 ~~(a) bearer or the order of bearer; or~~

25 ~~(b) a specified person or bearer; or~~

26 ~~(c) "cash" or the order of "cash", or any other indication~~

27 ~~which does not purport to designate a specific payee.~~ EXCEPT AS

1 OTHERWISE PROVIDED FOR ITEMS IN ARTICLE 4, AN INSTRUMENT IS
2 PAYABLE AT THE PLACE OF PAYMENT STATED IN THE INSTRUMENT. IF NO
3 PLACE OF PAYMENT IS STATED, AN INSTRUMENT IS PAYABLE AT THE
4 ADDRESS OF THE DRAWEE OR MAKER STATED IN THE INSTRUMENT. IF NO
5 ADDRESS IS STATED, THE PLACE OF PAYMENT IS THE PLACE OF BUSINESS
6 OF THE DRAWEE OR MAKER. IF A DRAWEE OR MAKER HAS MORE THAN 1
7 PLACE OF BUSINESS, THE PLACE OF PAYMENT IS ANY PLACE OF BUSINESS
8 OF THE DRAWEE OR MAKER CHOSEN BY THE PERSON ENTITLED TO ENFORCE
9 THE INSTRUMENT. IF THE DRAWEE OR MAKER HAS NO PLACE OF BUSINESS,
10 THE PLACE OF PAYMENT IS THE RESIDENCE OF THE DRAWEE OR MAKER.

11 Sec. 3112. ~~(1) The negotiability of an instrument is not~~
12 ~~affected by~~

13 ~~(a) the omission of a statement of any consideration or of~~
14 ~~the place where the instrument is drawn or payable; or~~

15 ~~(b) a statement that collateral has been given to secure~~
16 ~~obligations either on the instrument or otherwise of an obligor~~
17 ~~on the instrument or that in the case of default on those obliga-~~
18 ~~tions the holder may realize on or dispose of the collateral; or~~

19 ~~(c) a promise or power to maintain or protect collateral or~~
20 ~~to give additional collateral; or~~

21 ~~(d) a term authorizing a confession of judgment on the~~
22 ~~instrument if it is not paid when due; or~~

23 ~~(e) a term purporting to waive the benefit of any law~~
24 ~~intended for the advantage or protection of any obligor; or~~

25 ~~(f) a term in a draft providing that the payee by indorsing~~
26 ~~or cashing it acknowledges full satisfaction of an obligation of~~
27 ~~the drawer; or~~

1 ~~(g) a statement in a draft drawn in a set of parts (section~~
2 ~~3801) to the effect that the order is effective only if no other~~
3 ~~part has been honored.~~

4 ~~(2) Nothing in this section shall validate any term which is~~
5 ~~otherwise illegal. (1) UNLESS OTHERWISE PROVIDED IN THE~~
6 INSTRUMENT:

7 (A) AN INSTRUMENT IS NOT PAYABLE WITH INTEREST.

8 (B) INTEREST ON AN INTEREST-BEARING INSTRUMENT IS PAYABLE
9 FROM THE DATE OF THE INSTRUMENT.

10 (2) INTEREST MAY BE STATED IN AN INSTRUMENT AS A FIXED OR
11 VARIABLE AMOUNT OF MONEY OR IT MAY BE EXPRESSED AS A FIXED OR
12 VARIABLE RATE OR RATES. THE AMOUNT OR RATE OF INTEREST MAY BE
13 STATED OR DESCRIBED IN THE INSTRUMENT IN ANY MANNER AND MAY
14 REQUIRE REFERENCE TO INFORMATION NOT CONTAINED IN THE
15 INSTRUMENT. IF AN INSTRUMENT PROVIDES FOR INTEREST, BUT THE
16 AMOUNT OF INTEREST PAYABLE CANNOT BE ASCERTAINED FROM THE
17 DESCRIPTION, INTEREST IS PAYABLE AT THE JUDGMENT RATE IN EFFECT
18 AT THE PLACE OF PAYMENT OF THE INSTRUMENT AND AT THE TIME INTER-
19 EST FIRST ACCRUES.

20 Sec. 3113. ~~An instrument otherwise negotiable is within~~
21 ~~this article even though it is under a seal. (1) AN INSTRUMENT~~
22 MAY BE ANTEDATED OR POSTDATED. THE DATE STATED DETERMINES THE
23 TIME OF PAYMENT IF THE INSTRUMENT IS PAYABLE AT A FIXED PERIOD
24 AFTER DATE. EXCEPT AS PROVIDED IN SECTION 4401(3), AN INSTRUMENT
25 PAYABLE ON DEMAND IS NOT PAYABLE BEFORE THE DATE OF THE
26 INSTRUMENT.

1 (2) IF AN INSTRUMENT IS UNDATED, ITS DATE IS THE DATE OF ITS
2 ISSUE OR, IN THE CASE OF AN UNISSUED INSTRUMENT, THE DATE IT
3 FIRST COMES INTO POSSESSION OF A HOLDER.

4 Sec. 3114. ~~(1) The negotiability of an instrument is not~~
5 ~~affected by the fact that it is undated, antedated or postdated.~~

6 ~~(2) Where an instrument is antedated or postdated the time~~
7 ~~when it is payable is determined by the stated date if the~~
8 ~~instrument is payable on demand or at a fixed period after date.~~

9 ~~(3) Where the instrument or any signature thereon is dated,~~
10 ~~the date is presumed to be correct.~~ IF AN INSTRUMENT CONTAINS
11 CONTRADICTORY TERMS, TYPEWRITTEN TERMS PREVAIL OVER PRINTED
12 TERMS, HANDWRITTEN TERMS PREVAIL OVER BOTH, AND WORDS PREVAIL
13 OVER NUMBERS.

14 Sec. 3115. ~~(1) When a paper whose contents at the time of~~
15 ~~signing show that it is intended to become an instrument is~~
16 ~~signed while still incomplete in any necessary respect it cannot~~
17 ~~be enforced until completed, but when it is completed in accord-~~
18 ~~ance with authority given it is effective as completed.~~

19 ~~(2) If the completion is unauthorized the rules as to mate-~~
20 ~~rial alteration apply (section 3407), even though the paper was~~
21 ~~not delivered by the maker or drawer, but the burden of estab-~~
22 ~~lishing that any completion is unauthorized is on the party so~~
23 ~~asserting~~ (1) "INCOMPLETE INSTRUMENT" MEANS A SIGNED WRITING,
24 WHETHER OR NOT ISSUED BY THE SIGNER, THE CONTENTS OF WHICH SHOW
25 AT THE TIME OF SIGNING THAT IT IS INCOMPLETE BUT THAT THE SIGNER
26 INTENDED IT TO BE COMPLETED BY THE ADDITION OF WORDS OR NUMBERS.

1 (2) SUBJECT TO SUBSECTION (3), IF AN INCOMPLETE INSTRUMENT
2 IS AN INSTRUMENT UNDER SECTION 3104, IT MAY BE ENFORCED ACCORDING
3 TO ITS TERMS IF IT IS NOT COMPLETED, OR ACCORDING TO ITS TERMS AS
4 AUGMENTED BY COMPLETION. IF AN INCOMPLETE INSTRUMENT IS NOT AN
5 INSTRUMENT UNDER SECTION 3104, BUT, AFTER COMPLETION, THE
6 REQUIREMENTS OF SECTION 3104 ARE MET, THE INSTRUMENT MAY BE
7 ENFORCED ACCORDING TO ITS TERMS AS AUGMENTED BY COMPLETION.

8 (3) IF WORDS OR NUMBERS ARE ADDED TO AN INCOMPLETE INSTRU-
9 MENT WITHOUT AUTHORITY OF THE SIGNER, THERE IS AN ALTERATION OF
10 THE INCOMPLETE INSTRUMENT UNDER SECTION 3407.

11 (4) THE BURDEN OF ESTABLISHING THAT WORDS OR NUMBERS WERE
12 ADDED TO AN INCOMPLETE INSTRUMENT WITHOUT AUTHORITY OF THE SIGNER
13 IS ON THE PERSON ASSERTING THE LACK OF AUTHORITY.

14 Sec. 3116. ~~An instrument payable to the order of 2 or more~~
15 ~~persons~~

16 ~~(a) if in the alternative is payable to any one of them and~~
17 ~~may be negotiated, discharged or enforced by any of them who has~~
18 ~~possession of it;~~

19 ~~(b) if not in the alternative is payable to all of them and~~
20 ~~may be negotiated, discharged or enforced only by all of them.~~

21 (1) EXCEPT AS OTHERWISE PROVIDED IN THE INSTRUMENT, 2 OR
22 MORE PERSONS WHO HAVE THE SAME LIABILITY ON AN INSTRUMENT AS
23 MAKERS, DRAWERS, ACCEPTORS, ENDORSERS WHO ENDORSE AS JOINT
24 PAYEES, OR ANOMALOUS ENDORSERS ARE JOINTLY AND SEVERALLY LIABLE
25 IN THE CAPACITY IN WHICH THEY SIGN.

26 (2) EXCEPT AS PROVIDED IN SECTION 3419(5) OR BY AGREEMENT OF
27 THE AFFECTED PARTIES, A PARTY HAVING JOINT AND SEVERAL LIABILITY

1 WHO PAY THE INSTRUMENT IS ENTITLED TO RECEIVE FROM ANY PARTY
2 HAVING THE SAME JOINT AND SEVERAL LIABILITY CONTRIBUTION IN
3 ACCORDANCE WITH APPLICABLE LAW.

4 (3) DISCHARGE OF 1 PARTY HAVING JOINT AND SEVERAL LIABILITY
5 BY A PERSON ENTITLED TO ENFORCE THE INSTRUMENT DOES NOT AFFECT
6 THE RIGHT UNDER SUBSECTION (2) OF A PARTY HAVING THE SAME JOINT
7 AND SEVERAL LIABILITY TO RECEIVE CONTRIBUTION FROM THE PARTY
8 DISCHARGED.

9 Sec. 3117. ~~An instrument made payable to a named person~~
10 ~~with the addition of words describing him~~

11 ~~(a) as agent or officer of a specified person is payable to~~
12 ~~his principal but the agent or officer may act as if he were the~~
13 ~~holder;~~

14 ~~(b) as any other fiduciary for a specified person or purpose~~
15 ~~is payable to the payee and may be negotiated, discharged or~~
16 ~~enforced by him;~~

17 ~~(c) in any other manner is payable to the payee uncondition-~~
18 ~~ally and the additional words are without effect on subsequent~~
19 ~~parties.~~ SUBJECT TO APPLICABLE LAW REGARDING EXCLUSION OF PROOF
20 OF CONTEMPORANEOUS OR PREVIOUS AGREEMENTS, THE OBLIGATION OF A
21 PARTY TO AN INSTRUMENT TO PAY THE INSTRUMENT MAY BE MODIFIED,
22 SUPPLEMENTED, OR NULLIFIED BY A SEPARATE AGREEMENT OF THE OBLIGOR
23 AND A PERSON ENTITLED TO ENFORCE THE INSTRUMENT, IF THE INSTRU-
24 MENT IS ISSUED OR THE OBLIGATION IS INCURRED IN RELIANCE ON THE
25 AGREEMENT OR AS PART OF THE SAME TRANSACTION GIVING RISE TO THE
26 AGREEMENT. TO THE EXTENT AN OBLIGATION IS MODIFIED,

1 SUPPLEMENTED, OR NULLIFIED BY AN AGREEMENT UNDER THIS SECTION,
2 THE AGREEMENT IS A DEFENSE TO THE OBLIGATION.

3 Sec. 3118. ~~The following rules apply to every instrument:~~

4 ~~(a) Where there is doubt whether the instrument is a draft~~
5 ~~or a note the holder may treat it as either. A draft drawn on~~
6 ~~the drawer is effective as a note.~~

7 ~~(b) Handwritten terms control typewritten and printed terms,~~
8 ~~and typewritten control printed.~~

9 ~~(c) Words control figures except that if the words are~~
10 ~~ambiguous figures control.~~

11 ~~(d) Unless otherwise specified a provision for interest~~
12 ~~means interest at the judgment rate at the place of payment from~~
13 ~~the date of the instrument, or if it is undated from the date of~~
14 ~~issue.~~

15 ~~(e) Unless the instrument otherwise specifies 2 or more per~~
16 ~~sons who sign as maker, acceptor or drawer or indorser and as a~~
17 ~~part of the same transaction are jointly and severally liable~~
18 ~~even though the instrument contains such words as "I promise to~~
19 ~~pay".~~

20 ~~(f) Unless otherwise specified consent to extension autho-~~
21 ~~rizes a single extension for not longer than the original~~
22 ~~period. A consent to extension, expressed in the instrument, is~~
23 ~~binding on secondary parties and accommodation makers. A holder~~
24 ~~may not exercise his option to extend an instrument over the~~
25 ~~objection of a maker or acceptor or other party who in accordance~~
26 ~~with section 3604 tenders full payment when the instrument is~~
27 ~~due.~~

1 (1) EXCEPT AS PROVIDED IN SUBSECTION (5), AN ACTION TO
2 ENFORCE THE OBLIGATION OF A PARTY TO PAY A NOTE PAYABLE AT A DEF-
3 INITE TIME MUST BE COMMENCED WITHIN 6 YEARS AFTER THE DUE DATE OR
4 DATES STATED IN THE NOTE OR, IF A DUE DATE IS ACCELERATED, WITHIN
5 6 YEARS AFTER THE ACCELERATED DUE DATE.

6 (2) EXCEPT AS PROVIDED IN SUBSECTION (4) OR (5), IF DEMAND
7 FOR PAYMENT IS MADE TO THE MAKER OF A NOTE PAYABLE ON DEMAND, AN
8 ACTION TO ENFORCE THE OBLIGATION OF A PARTY TO PAY THE NOTE MUST
9 BE COMMENCED WITHIN 6 YEARS AFTER THE DEMAND. IF NO DEMAND FOR
10 PAYMENT IS MADE TO THE MAKER, AN ACTION TO ENFORCE THE NOTE IS
11 BARRED IF NEITHER PRINCIPAL NOR INTEREST ON THE NOTE HAS BEEN
12 PAID FOR A CONTINUOUS PERIOD OF 10 YEARS.

13 (3) EXCEPT AS PROVIDED IN SUBSECTION (4), AN ACTION TO
14 ENFORCE THE OBLIGATION OF A PARTY TO AN UNACCEPTED DRAFT TO PAY
15 THE DRAFT MUST BE COMMENCED WITHIN 3 YEARS AFTER DISHONOR OF THE
16 DRAFT OR 10 YEARS AFTER THE DATE OF THE DRAFT, WHICHEVER PERIOD
17 EXPIRES FIRST.

18 (4) AN ACTION TO ENFORCE THE OBLIGATION OF THE ACCEPTOR OF A
19 CERTIFIED CHECK OR THE ISSUER OF A TELLER'S CHECK, CASHIER'S
20 CHECK, OR TRAVELER'S CHECK MUST BE COMMENCED WITHIN 3 YEARS AFTER
21 DEMAND FOR PAYMENT IS MADE TO THE ACCEPTOR OR ISSUER.

22 (5) AN ACTION TO ENFORCE THE OBLIGATION OF A PARTY TO A CER-
23 TIFICATE OF DEPOSIT TO PAY THE INSTRUMENT MUST BE COMMENCED
24 WITHIN 6 YEARS AFTER DEMAND FOR PAYMENT IS MADE TO THE MAKER, BUT
25 IF THE INSTRUMENT STATES A DUE DATE AND THE MAKER IS NOT REQUIRED
26 TO PAY BEFORE THAT DATE, THE 6-YEAR PERIOD BEGINS WHEN A DEMAND
27 FOR PAYMENT IS IN EFFECT AND THE DUE DATE HAS PASSED.

1 (6) AN ACTION TO ENFORCE THE OBLIGATION OF A PARTY TO PAY AN
2 ACCEPTED DRAFT, OTHER THAN A CERTIFIED CHECK, MUST BE COMMENCED
3 (i) WITHIN 6 YEARS AFTER THE DUE DATE OR DATES STATES IN THE
4 DRAFT OR ACCEPTANCE IF THE OBLIGATION OF THE ACCEPTOR IS PAYABLE
5 AT A DEFINITE TIME, OR (ii) WITHIN 6 YEARS AFTER THE DATE OF THE
6 ACCEPTANCE IF THE OBLIGATION OF THE ACCEPTOR IS PAYABLE ON
7 DEMAND.

8 (7) UNLESS GOVERNED BY OTHER LAW REGARDING CLAIMS FOR INDEM-
9 NITY OR CONTRIBUTION, AN ACTION (i) FOR CONVERSION OF AN INSTRU-
10 MENT, FOR MONEY HAD AND RECEIVED, OR LIKE ACTION BASED ON CONVER-
11 SION, (ii) FOR BREACH OF WARRANTY, OR (iii) TO ENFORCE AN OBLIGA-
12 TION, DUTY, OR RIGHT ARISING UNDER THIS ARTICLE AND NOT GOVERNED
13 BY THIS SECTION MUST BE COMMENCED WITHIN 3 YEARS AFTER THE CAUSE
14 OF ACTION ACCRUES.

15 Sec. 3119. ~~(1) As between the obligor and his immediate~~
16 ~~obligee or any transferee the terms of an instrument may be modi-~~
17 ~~fied or affected by any other written agreement executed as a~~
18 ~~part of the same transaction, except that a holder in due course~~
19 ~~is not affected by any limitation of his rights arising out of~~
20 ~~the separate written agreement if he had no notice of the limita-~~
21 ~~tion when he took the instrument.~~

22 ~~(2) A separate agreement does not affect the negotiability~~
23 ~~of an instrument.~~ IN AN ACTION FOR BREACH OF AN OBLIGATION FOR
24 WHICH A THIRD PERSON IS ANSWERABLE OVER PURSUANT TO THIS ARTICLE
25 OR ARTICLE 4, THE DEFENDANT MAY GIVE THE THIRD PERSON WRITTEN
26 NOTICE OF THE LITIGATION, AND THE PERSON NOTIFIED MAY THEN GIVE
27 SIMILAR NOTICE TO ANY OTHER PERSON WHO IS ANSWERABLE OVER. IF

1 THE NOTICE STATES (i) THAT THE PERSON NOTIFIED MAY COME IN AND
2 DEFEND AND (ii) THAT FAILURE TO DO SO WILL BIND THE PERSON NOTI-
3 FIED IN AN ACTION LATER BROUGHT BY THE PERSON GIVING THE NOTICE
4 AS TO ANY DETERMINATION OF FACT COMMON TO THE 2 LITIGATIONS, THE
5 PERSON NOTIFIED IS SO BOUND UNLESS AFTER SEASONABLE RECEIPT OF
6 THE NOTICE THE PERSON NOTIFIED DOES COME IN AND DEFEND.

7 PART 2. ~~TRANSFER AND NEGOTIATION~~ NEGOTIATION, TRANSFER, AND
8 ENDORSEMENT

9 Sec. 3201. ~~(1) Transfer of an instrument vests in the~~
10 ~~transferee such rights as the transferor has therein, except that~~
11 ~~a transferee who has himself been a party to any fraud or illega-~~
12 ~~lity affecting the instrument or who as a prior holder had notice~~
13 ~~of a defense or claim against it cannot improve his position by~~
14 ~~taking from the later holder in due course.~~

15 ~~(2) A transfer of a security interest in an instrument vests~~
16 ~~the foregoing rights in the transferee to the extent of the~~
17 ~~interest transferred.~~

18 ~~(3) Unless otherwise agreed any transfer for value of an~~
19 ~~instrument not then payable to bearer gives the transferee the~~
20 ~~specifically enforceable right to have the unqualified indorse-~~
21 ~~ment of the transferor. Negotiation takes effect only when the~~
22 ~~indorsement is made and until that time there is no presumption~~
23 ~~that the transferee is the owner.~~

24 (1) "NEGOTIATION" MEANS A TRANSFER OF POSSESSION, WHETHER
25 VOLUNTARY OR INVOLUNTARY, OF AN INSTRUMENT BY A PERSON OTHER THAN
26 THE ISSUER TO A PERSON WHO THEREBY BECOMES ITS HOLDER.

1 (2) EXCEPT FOR NEGOTIATION BY A REMITTER, IF AN INSTRUMENT
2 IS PAYABLE TO AN IDENTIFIED PERSON, NEGOTIATION REQUIRES TRANSFER
3 OF POSSESSION OF THE INSTRUMENT AND ITS ENDORSEMENT BY THE
4 HOLDER. IF AN INSTRUMENT IS PAYABLE TO BEARER, IT MAY BE NEGOTI-
5 ATED BY TRANSFER OF POSSESSION ALONE.

6 Sec. 3202. ~~(1) Negotiation is the transfer of an instru-~~
7 ~~ment in such form that the transferee becomes a holder. If the~~
8 ~~instrument is payable to order it is negotiated by delivery with~~
9 ~~any necessary indorsement; if payable to bearer it is negotiated~~
10 ~~by delivery.~~

11 ~~(2) An indorsement must be written by or on behalf of the~~
12 ~~holder and on the instrument or on a paper so firmly affixed~~
13 ~~thereto as to become a part thereof.~~

14 ~~(3) An indorsement is effective for negotiation only when it~~
15 ~~conveys the entire instrument or any unpaid residue. If it pur-~~
16 ~~ports to be of less it operates only as a partial assignment.~~

17 ~~(4) Words of assignment, condition, waiver, guaranty, limi-~~
18 ~~tation or disclaimer of liability and the like accompanying an~~
19 ~~indorsement do not affect its character as an indorsement.~~

20 (1) NEGOTIATION IS EFFECTIVE EVEN IF OBTAINED (i) FROM AN
21 INFANT, A CORPORATION EXCEEDING ITS POWERS, OR A PERSON WITHOUT
22 CAPACITY, (ii) BY FRAUD, DURESS, OR MISTAKE, OR (iii) IN BREACH
23 OF DUTY OR AS PART OF AN ILLEGAL TRANSACTION.

24 (2) TO THE EXTENT PERMITTED BY OTHER LAW, NEGOTIATION MAY BE
25 RESCINDED OR MAY BE SUBJECT TO OTHER REMEDIES, BUT THOSE REMEDIES
26 MAY NOT BE ASSERTED AGAINST A SUBSEQUENT HOLDER IN DUE COURSE OR
27 A PERSON PAYING THE INSTRUMENT IN GOOD FAITH AND WITHOUT

1 KNOWLEDGE OF FACTS THAT ARE A BASIS FOR RESCISSION OR OTHER
2 REMEDY.

3 Sec. 3203. ~~Where an instrument is made payable to a person~~
4 ~~under a misspelled name or one other than his own he may indorse~~
5 ~~in that name or his own or both; but signature in both names may~~
6 ~~be required by a person paying or giving value for the~~
7 ~~instrument.~~

8 (1) AN INSTRUMENT IS TRANSFERRED WHEN IT IS DELIVERED BY A
9 PERSON OTHER THAN ITS ISSUER FOR THE PURPOSE OF GIVING TO THE
10 PERSON RECEIVING DELIVERY THE RIGHT TO ENFORCE THE INSTRUMENT.

11 (2) TRANSFER OF AN INSTRUMENT, WHETHER OR NOT THE TRANSFER
12 IS A NEGOTIATION, VESTS IN THE TRANSFEREE ANY RIGHT OF THE TRANS-
13 FEROR TO ENFORCE THE INSTRUMENT, INCLUDING ANY RIGHT AS A HOLDER
14 IN DUE COURSE, BUT THE TRANSFEREE CANNOT ACQUIRE RIGHTS OF A
15 HOLDER IN DUE COURSE BY A TRANSFER, DIRECTLY OR INDIRECTLY, FROM
16 A HOLDER IN DUE COURSE IF THE TRANSFEREE ENGAGED IN FRAUD OR
17 ILLEGALITY AFFECTING THE INSTRUMENT.

18 (3) UNLESS OTHERWISE AGREED, IF AN INSTRUMENT IS TRANSFERRED
19 FOR VALUE AND THE TRANSFEREE DOES NOT BECOME A HOLDER BECAUSE OF
20 LACK OF ENDORSEMENT BY THE TRANSFEROR, THE TRANSFEREE HAS A SPE-
21 CIFICALLY ENFORCEABLE RIGHT TO THE UNQUALIFIED ENDORSEMENT OF THE
22 TRANSFEROR, BUT NEGOTIATION OF THE INSTRUMENT DOES NOT OCCUR
23 UNTIL THE ENDORSEMENT IS MADE.

24 (4) IF A TRANSFEROR PURPORTS TO TRANSFER LESS THAN THE
25 ENTIRE INSTRUMENT, NEGOTIATION OF THE INSTRUMENT DOES NOT OCCUR.
26 THE TRANSFEREE OBTAINS NO RIGHTS UNDER THIS ARTICLE AND HAS ONLY
27 THE RIGHTS OF A PARTIAL ASSIGNEE.

1 Sec. 3204. ~~-(1) A special indorsement specifies the person~~
2 ~~to whom or to whose order it makes the instrument payable. Any~~
3 ~~instrument specially indorsed becomes payable to the order of the~~
4 ~~special indorsee and may be further negotiated only by his~~
5 ~~indorsement.~~

6 ~~(2) An indorsement in blank specifies no particular indorsee~~
7 ~~and may consist of a mere signature. An instrument payable to~~
8 ~~order and indorsed in blank becomes payable to bearer and may be~~
9 ~~negotiated by delivery alone until specially indorsed.~~

10 ~~(3) The holder may convert a blank indorsement into a spe-~~
11 ~~cial indorsement by writing over the signature of the indorser in~~
12 ~~blank any contract consistent with the character of the~~
13 ~~indorsement.~~

14 (1) "ENDORSEMENT" MEANS A SIGNATURE, OTHER THAN THAT OF A
15 SIGNER AS MAKER, DRAWER, OR ACCEPTOR, THAT ALONE OR ACCOMPANIED
16 BY OTHER WORDS IS MADE ON AN INSTRUMENT FOR THE PURPOSE OF (i)
17 NEGOTIATING THE INSTRUMENT, (ii) RESTRICTING PAYMENT OF THE
18 INSTRUMENT, OR (iii) INCURRING ENDORSER'S LIABILITY ON THE
19 INSTRUMENT, BUT REGARDLESS OF THE INTENT OF THE SIGNER, A SIGNA-
20 TURE AND ITS ACCOMPANYING WORDS IS AN ENDORSEMENT UNLESS THE
21 ACCOMPANYING WORDS, TERMS OF THE INSTRUMENT, PLACE OF THE SIGNA-
22 TURE, OR OTHER CIRCUMSTANCES UNAMBIGUOUSLY INDICATE THAT THE SIG-
23 NATURE WAS MADE FOR A PURPOSE OTHER THAN ENDORSEMENT. FOR THE
24 PURPOSE OF DETERMINING WHETHER A SIGNATURE IS MADE ON AN INSTRU-
25 MENT, A PAPER AFFIXED TO THE INSTRUMENT IS A PART OF THE
26 INSTRUMENT.

(2) "ENDORSER" MEANS A PERSON WHO MAKES AN ENDORSEMENT.

(3) FOR THE PURPOSE OF DETERMINING WHETHER THE TRANSFEREE OF AN INSTRUMENT IS A HOLDER, AN ENDORSEMENT THAT TRANSFERS A SECURITY INTEREST IN THE INSTRUMENT IS EFFECTIVE AS AN UNQUALIFIED ENDORSEMENT OF THE INSTRUMENT.

(4) IF AN INSTRUMENT IS PAYABLE TO A HOLDER UNDER A NAME THAT IS NOT THE NAME OF THE HOLDER, ENDORSEMENT MAY BE MADE BY THE HOLDER IN THE NAME STATED IN THE INSTRUMENT OR IN THE HOLDER'S NAME OR BOTH, BUT SIGNATURE IN BOTH NAMES MAY BE REQUIRED BY A PERSON PAYING OR TAKING THE INSTRUMENT FOR VALUE OR COLLECTION.

Sec. 3205. ~~An indorsement is restrictive which either~~

~~(a) is conditional; or~~

~~(b) purports to prohibit further transfer of the instrument;~~

~~or~~

~~(c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or~~

~~(d) otherwise states that it is for the benefit or use of the indorser or of another person.~~

(1) IF AN ENDORSEMENT IS MADE BY THE HOLDER OF AN INSTRUMENT, WHETHER PAYABLE TO AN IDENTIFIED PERSON OR PAYABLE TO BEARER, AND THE ENDORSEMENT IDENTIFIES A PERSON TO WHOM IT MAKES THE INSTRUMENT PAYABLE, IT IS A "SPECIAL ENDORSEMENT". WHEN SPECIALLY ENDORSED, AN INSTRUMENT BECOMES PAYABLE TO THE IDENTIFIED PERSON AND MAY BE NEGOTIATED ONLY BY THE ENDORSEMENT OF THAT

1 PERSON. THE PRINCIPLES STATED IN SECTION 3110 APPLY TO SPECIAL
2 ENDORSEMENTS.

3 (2) IF AN ENDORSEMENT IS MADE BY THE HOLDER OF AN INSTRUMENT
4 AND IT IS NOT A SPECIAL ENDORSEMENT, IT IS A "BLANK
5 ENDORSEMENT". WHEN ENDORSED IN BLANK, AN INSTRUMENT BECOMES PAY-
6 ABLE TO BEARER AND MAY BE NEGOTIATED BY TRANSFER OF POSSESSION
7 ALONE UNTIL SPECIALLY ENDORSED.

8 (3) THE HOLDER MAY CONVERT A BLANK ENDORSEMENT THAT CONSISTS
9 ONLY OF A SIGNATURE INTO A SPECIAL ENDORSEMENT BY WRITING, ABOVE
10 THE SIGNATURE OF THE ENDORSER, WORDS IDENTIFYING THE PERSON TO
11 WHOM THE INSTRUMENT IS MADE PAYABLE.

12 (4) "ANOMALOUS ENDORSEMENT" MEANS AN ENDORSEMENT MADE BY A
13 PERSON WHO IS NOT THE HOLDER OF THE INSTRUMENT. AN ANOMALOUS
14 ENDORSEMENT DOES NOT AFFECT THE MANNER IN WHICH THE INSTRUMENT
15 MAY BE NEGOTIATED.

16 Sec. 3206. ~~(1) No restrictive indorsement prevents further~~
17 ~~transfer or negotiation of the instrument.~~

18 ~~(2) An intermediary bank, or a payor bank which is not the~~
19 ~~depository bank, is neither given notice nor otherwise affected~~
20 ~~by a restrictive indorsement of any person except the bank's~~
21 ~~immediate transferor or the person presenting for payment.~~

22 ~~(3) Except for an intermediary bank, any transferee under an~~
23 ~~indorsement which is conditional or includes the words "for~~
24 ~~collection", "for deposit", "pay any bank", or like terms~~
25 ~~(subparagraphs (a) and (c) of section 3205) must pay or apply any~~
26 ~~value given by him for or on the security of the instrument~~
27 ~~consistently with the indorsement and to the extent that he does~~

1 ~~so he becomes a holder for value. In addition such transferee is~~
2 ~~a holder in due course if he otherwise complies with the require-~~
3 ~~ments of section 3302 on what constitutes a holder in due~~
4 ~~course.~~

5 ~~(4) The first taker under an indorsement for the benefit of~~
6 ~~the indorser or another person (subparagraph (d) of section 3205)~~
7 ~~must pay or apply any value given by him for or on the security~~
8 ~~of the instrument consistently with the indorsement and to the~~
9 ~~extent that he does so he becomes a holder for value. In addi-~~
10 ~~tion such taker is a holder in due course if he otherwise com-~~
11 ~~plies with the requirements of section 3302 on what constitutes a~~
12 ~~holder in due course. A later holder for value is neither given~~
13 ~~notice nor otherwise affected by such restrictive indorsement~~
14 ~~unless he has knowledge that a fiduciary or other person has~~
15 ~~negotiated the instrument in any transaction for his own benefit~~
16 ~~or otherwise in breach of duty (subsection (2) of section 3304).~~

17 (1) AN ENDORSEMENT LIMITING PAYMENT TO A PARTICULAR PERSON
18 OR OTHERWISE PROHIBITING FURTHER TRANSFER OR NEGOTIATION OF THE
19 INSTRUMENT IS NOT EFFECTIVE TO PREVENT FURTHER TRANSFER OR NEGO-
20 TIATION OF THE INSTRUMENT.

21 (2) AN ENDORSEMENT STATING A CONDITION TO THE RIGHT OF THE
22 ENDORSEE TO RECEIVE PAYMENT DOES NOT AFFECT THE RIGHT OF THE
23 ENDORSEE TO ENFORCE THE INSTRUMENT. A PERSON PAYING THE INSTRU-
24 MENT OR TAKING IT FOR VALUE OR COLLECTION MAY DISREGARD THE CON-
25 DITION, AND THE RIGHTS AND LIABILITIES OF THAT PERSON ARE NOT
26 AFFECTED BY WHETHER THE CONDITION HAS BEEN FULFILLED.

1 (3) IF AN INSTRUMENT BEARS AN ENDORSEMENT (i) DESCRIBED IN
2 SECTION 4201(2), OR (ii) IN BLANK OR TO A PARTICULAR BANK USING
3 THE WORDS "FOR DEPOSIT", "FOR COLLECTION", OR OTHER WORDS INDICATING A PURPOSE OF HAVING THE INSTRUMENT COLLECTED BY A BANK FOR
4 THE ENDORSER OR FOR A PARTICULAR ACCOUNT, THE FOLLOWING RULES
5 APPLY:

7 (A) A PERSON, OTHER THAN A BANK, WHO PURCHASES THE INSTRUMENT WHEN SO ENDORSED CONVERTS THE INSTRUMENT UNLESS THE AMOUNT
8 PAID FOR THE INSTRUMENT IS RECEIVED BY THE ENDORSER OR APPLIED
9 CONSISTENTLY WITH THE ENDORSEMENT.

11 (B) A DEPOSITARY BANK THAT PURCHASES THE INSTRUMENT OR TAKES
12 IT FOR COLLECTION WHEN SO ENDORSED CONVERTS THE INSTRUMENT UNLESS
13 THE AMOUNT PAID BY THE BANK WITH RESPECT TO THE INSTRUMENT IS
14 RECEIVED BY THE ENDORSER OR APPLIED CONSISTENTLY WITH THE
15 ENDORSEMENT.

16 (C) A PAYOR BANK THAT IS ALSO THE DEPOSITARY BANK OR THAT
17 TAKES THE INSTRUMENT FOR IMMEDIATE PAYMENT OVER THE COUNTER FROM
18 A PERSON OTHER THAN A COLLECTING BANK CONVERTS THE INSTRUMENT
19 UNLESS THE PROCEEDS OF THE INSTRUMENT ARE RECEIVED BY THE
20 ENDORSER OR APPLIED CONSISTENTLY WITH THE ENDORSEMENT.

21 (D) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (C), A PAYOR
22 BANK OR INTERMEDIARY BANK MAY DISREGARD THE ENDORSEMENT AND IS
23 NOT LIABLE IF THE PROCEEDS OF THE INSTRUMENT ARE NOT RECEIVED BY
24 THE ENDORSER OR APPLIED CONSISTENTLY WITH THE ENDORSEMENT.

25 (4) EXCEPT FOR AN ENDORSEMENT COVERED BY SUBSECTION (3), IF
26 AN INSTRUMENT BEARS AN ENDORSEMENT USING WORDS TO THE EFFECT THAT
27 PAYMENT IS TO BE MADE TO THE ENDORSEE AS AGENT, TRUSTEE, OR OTHER

1 FIDUCIARY FOR THE BENEFIT OF THE ENDORSER OR ANOTHER PERSON, THE
2 FOLLOWING RULES APPLY:

3 (A) UNLESS THERE IS NOTICE OF BREACH OF FIDUCIARY DUTY AS
4 PROVIDED IN SECTION 3307, A PERSON WHO PURCHASES THE INSTRUMENT
5 FROM THE ENDORSEE OR TAKES THE INSTRUMENT FROM THE ENDORSEE FOR
6 COLLECTION OR PAYMENT MAY PAY THE PROCEEDS OF THE PAYMENT OR THE
7 VALUE GIVEN FOR THE INSTRUMENT TO THE ENDORSEE WITHOUT REGARD TO
8 WHETHER THE ENDORSEE VIOLATES A FIDUCIARY DUTY TO THE ENDORSER.

9 (B) A SUBSEQUENT TRANSFEREE OF THE INSTRUMENT OR PERSON WHO
10 PAYS THE INSTRUMENT IS NEITHER GIVEN NOTICE NOR OTHERWISE
11 AFFECTED BY THE RESTRICTION IN THE ENDORSEMENT UNLESS THE TRANS-
12 FERE OR PAYOR KNOWS THAT THE FIDUCIARY DEALT WITH THE INSTRUMENT
13 OR ITS PROCEEDS IN BREACH OF FIDUCIARY DUTY.

14 (5) THE PRESENCE ON AN INSTRUMENT OF AN ENDORSEMENT TO WHICH
15 THIS SECTION APPLIES DOES NOT PREVENT A PURCHASER OF THE INSTRU-
16 MENT FROM BECOMING A HOLDER IN DUE COURSE OF THE INSTRUMENT
17 UNLESS THE PURCHASER IS A CONVERTER UNDER SUBSECTION (3) OR HAS
18 NOTICE OR KNOWLEDGE OF BREACH OF FIDUCIARY DUTY AS STATED IN
19 SUBSECTION (4).

20 (6) IN AN ACTION TO ENFORCE THE OBLIGATION OF A PARTY TO PAY
21 THE INSTRUMENT, THE OBLIGOR HAS A DEFENSE IF PAYMENT WOULD VIO-
22 LATE AN ENDORSEMENT TO WHICH THIS SECTION APPLIES AND THE PAYMENT
23 IS NOT PERMITTED BY THIS SECTION.

24 Sec. 3207. ~~(1) Negotiation is effective to transfer the~~
25 ~~instrument although the negotiation is~~

26 ~~(a) made by an infant, a corporation exceeding its powers,~~
27 ~~or any other person without capacity, or~~

~~(b) obtained by fraud, duress or mistake of any kind; or~~
~~(c) part of an illegal transaction; or~~
~~(d) made in breach of duty.~~

~~(2) Except as against a subsequent holder in due course such~~
~~negotiation is in an appropriate case subject to rescission, the~~
~~declaration of a constructive trust or any other remedy permitted~~
~~by law.~~ REACQUISITION OF AN INSTRUMENT OCCURS IF IT IS TRANS-
FERRED TO A FORMER HOLDER, BY NEGOTIATION OR OTHERWISE. A FORMER
HOLDER WHO REACQUIRES THE INSTRUMENT MAY CANCEL ENDORSEMENTS MADE
AFTER THE REACQUIRER FIRST BECAME A HOLDER OF THE INSTRUMENT. IF
THE CANCELLATION CAUSES THE INSTRUMENT TO BE PAYABLE TO THE REAC-
QUIRER OR TO BEARER, THE REACQUIRER MAY NEGOTIATE THE
INSTRUMENT. AN ENDORSER WHOSE ENDORSEMENT IS CANCELED IS DIS-
CHARGED, AND THE DISCHARGE IS EFFECTIVE AGAINST ANY SUBSEQUENT
HOLDER.

PART 3. ~~RIGHTS OF A HOLDER~~ ENFORCEMENT OF INSTRUMENTS

Sec. 3301. ~~The holder of an instrument whether or not he~~
~~is the owner may transfer or negotiate it and, except as other-~~
~~wise provided in section 3603 on payment or satisfaction, dis-~~
~~charge it or enforce payment in his own name.~~ "PERSON ENTITLED
TO ENFORCE" AN INSTRUMENT MEANS (i) THE HOLDER OF THE INSTRUMENT,
(ii) A NONHOLDER IN POSSESSION OF THE INSTRUMENT WHO HAS THE
RIGHTS OF A HOLDER, OR (iii) A PERSON NOT IN POSSESSION OF THE
INSTRUMENT WHO IS ENTITLED TO ENFORCE THE INSTRUMENT PURSUANT TO
SECTION 3309 OR 3418(4). A PERSON MAY BE A PERSON ENTITLED TO
ENFORCE THE INSTRUMENT EVEN THOUGH THE PERSON IS NOT THE OWNER OF
THE INSTRUMENT OR IS IN WRONGFUL POSSESSION OF THE INSTRUMENT.

1 Sec. 3302.

2
3
4
5 ~~(c) without notice that it is overdue or has been dishonored~~
6 ~~or of any defense against or claim to it on the part of any~~
7 ~~person.~~

8 ~~(2) A payee may be a holder in due course.~~

9 ~~(3) A holder does not become a holder in due course of an~~
10 ~~instrument.~~

11 ~~(a) by purchase of it at judicial sale or by taking it under~~
12 ~~legal process; or~~

13 ~~(b) by acquiring it in taking over an estate; or~~

14 ~~(c) by purchasing it as part of a bulk transaction not in~~
15 ~~regular course of business of the transferor.~~

16 ~~(4) A purchaser of a limited interest can be a holder in due~~
17 ~~course only to the extent of the interest purchased.~~

18 (1) SUBJECT TO SUBSECTION (3) AND SECTION 3106(4), "HOLDER
19 IN DUE COURSE" MEANS THE HOLDER OF AN INSTRUMENT IF BOTH OF THE
20 FOLLOWING APPLY:

21 (A) THE INSTRUMENT WHEN ISSUED OR NEGOTIATED TO THE HOLDER
22 DOES NOT BEAR SUCH APPARENT EVIDENCE OF FORGERY OR ALTERATION OR
23 IS NOT OTHERWISE SO IRREGULAR OR INCOMPLETE AS TO CALL INTO QUES-
24 TION ITS AUTHENTICITY.

25 (B) THE HOLDER TOOK THE INSTRUMENT (i) FOR VALUE, (ii) IN
26 GOOD FAITH, (iii) WITHOUT NOTICE THAT THE INSTRUMENT IS OVERDUE
27 OR HAS BEEN DISHONORED OR THAT THERE IS AN INCURRED DEFAULT WITH

1 RESPECT TO PAYMENT OF ANOTHER INSTRUMENT ISSUED AS PART OF THE
2 SAME SERIES, (iv) WITHOUT NOTICE THAT THE INSTRUMENT CONTAINS AN
3 UNAUTHORIZED SIGNATURE OR HAS BEEN ALTERED, (v) WITHOUT NOTICE OF
4 ANY CLAIM TO THE INSTRUMENT DESCRIBED IN SECTION 3306, AND (vi)
5 WITHOUT NOTICE THAT ANY PARTY HAS A DEFENSE OR CLAIM IN RECOUP-
6 MENT DESCRIBED IN SECTION 3305(1).

7 (2) NOTICE OF DISCHARGE OF A PARTY, OTHER THAN DISCHARGE IN
8 AN INSOLVENCY PROCEEDING, IS NOT NOTICE OF A DEFENSE UNDER
9 SUBSECTION (1), BUT DISCHARGE IS EFFECTIVE AGAINST A PERSON WHO
10 BECAME A HOLDER IN DUE COURSE WITH NOTICE OF THE DISCHARGE.
11 PUBLIC FILING OR RECORDING OF A DOCUMENT DOES NOT OF ITSELF CON-
12 STITUTE NOTICE OF A DEFENSE, CLAIM IN RECOUPMENT, OR CLAIM TO THE
13 INSTRUMENT.

14 (3) EXCEPT TO THE EXTENT A TRANSFEROR OR PREDECESSOR IN
15 INTEREST HAS RIGHTS AS A HOLDER IN DUE COURSE, A PERSON DOES NOT
16 ACQUIRE RIGHTS OF A HOLDER IN DUE COURSE OF AN INSTRUMENT TAKEN
17 (i) BY LEGAL PROCESS OR BY PURCHASE IN AN EXECUTION, BANKRUPTCY,
18 OR CREDITOR'S SALE OR SIMILAR PROCEEDING, (ii) BY PURCHASE AS
19 PART OF A BULK TRANSACTION NOT IN ORDINARY COURSE OF BUSINESS OF
20 THE TRANSFEROR, OR (iii) AS THE SUCCESSOR IN INTEREST TO AN
21 ESTATE OR OTHER ORGANIZATION.

22 (4) IF UNDER SECTION 3303(1)(A) THE PROMISE OF PERFORMANCE
23 THAT IS THE CONSIDERATION FOR AN INSTRUMENT HAS BEEN PARTIALLY
24 PERFORMED, THE HOLDER MAY ASSERT RIGHTS AS A HOLDER IN DUE COURSE
25 OF THE INSTRUMENT ONLY TO THE FRACTION OF THE AMOUNT PAYABLE
26 UNDER THE INSTRUMENT EQUAL TO THE VALUE OF THE PARTIAL
27 PERFORMANCE DIVIDED BY THE VALUE OF THE PROMISED PERFORMANCE.

1 (5) IF (i) THE PERSON ENTITLED TO ENFORCE AN INSTRUMENT HAS
2 ONLY A SECURITY INTEREST IN THE INSTRUMENT AND (ii) THE PERSON
3 OBLIGED TO PAY THE INSTRUMENT HAS A DEFENSE, CLAIM IN RECOUPMENT,
4 OR CLAIM TO THE INSTRUMENT THAT MAY BE ASSERTED AGAINST THE
5 PERSON WHO GRANTED THE SECURITY INTEREST, THE PERSON ENTITLED TO
6 ENFORCE THE INSTRUMENT MAY ASSERT RIGHTS AS A HOLDER IN DUE
7 COURSE ONLY TO AN AMOUNT PAYABLE UNDER THE INSTRUMENT WHICH, AT
8 THE TIME OF ENFORCEMENT OF THE INSTRUMENT, DOES NOT EXCEED THE
9 AMOUNT OF THE UNPAID OBLIGATION SECURED.

10 (6) TO BE EFFECTIVE, NOTICE MUST BE RECEIVED AT A TIME AND
11 IN A MANNER THAT GIVES A REASONABLE OPPORTUNITY TO ACT ON IT.

12 (7) THIS SECTION IS SUBJECT TO ANY LAW LIMITING STATUS AS A
13 HOLDER IN DUE COURSE IN PARTICULAR CLASSES OF TRANSACTIONS.

14 Sec. 3303. ~~A holder takes the instrument for value~~

15 ~~(a) to the extent that the agreed consideration has been~~
16 ~~performed or that he acquires a security interest in or a lien on~~
17 ~~the instrument otherwise than by legal process; or~~

18 ~~(b) when he takes the instrument in payment of or as secur-~~
19 ~~ity for an antecedent claim against any person whether or not the~~
20 ~~claim is due; or~~

21 ~~(c) when he gives a negotiable instrument for it or makes an~~
22 ~~irrevocable commitment to a third person.~~

23 (1) AN INSTRUMENT IS ISSUED OR TRANSFERRED FOR VALUE IF ANY
24 OF THE FOLLOWING APPLY:

25 (A) THE INSTRUMENT IS ISSUED OR TRANSFERRED FOR A PROMISE OF
26 PERFORMANCE, TO THE EXTENT THE PROMISE HAS BEEN PERFORMED.

1 (B) THE TRANSFEREE ACQUIRES A SECURITY INTEREST OR OTHER
2 LIEN IN THE INSTRUMENT OTHER THAN A LIEN OBTAINED BY JUDICIAL
3 PROCEEDING.

4 (C) THE INSTRUMENT IS ISSUED OR TRANSFERRED AS PAYMENT OF,
5 OR AS SECURITY FOR, AN ANTECEDENT CLAIM AGAINST ANY PERSON,
6 WHETHER OR NOT THE CLAIM IS DUE.

7 (D) THE INSTRUMENT IS ISSUED OR TRANSFERRED IN EXCHANGE FOR
8 A NEGOTIABLE INSTRUMENT.

9 (E) THE INSTRUMENT IS ISSUED OR TRANSFERRED IN EXCHANGE FOR
10 THE INCURRING OF AN IRREVOCABLE OBLIGATION TO A THIRD PARTY BY
11 THE PERSON TAKING THE INSTRUMENT.

12 (2) "CONSIDERATION" MEANS ANY CONSIDERATION SUFFICIENT TO
13 SUPPORT A SIMPLE CONTRACT. THE DRAWER OR MAKER OF AN INSTRUMENT
14 HAS A DEFENSE IF THE INSTRUMENT IS ISSUED WITHOUT CONSIDERATION.
15 IF AN INSTRUMENT IS ISSUED FOR A PROMISE OF PERFORMANCE, THE
16 ISSUER HAS A DEFENSE TO THE EXTENT PERFORMANCE OF THE PROMISE IS
17 DUE AND THE PROMISE HAS NOT BEEN PERFORMED. IF AN INSTRUMENT IS
18 ISSUED FOR VALUE AS STATED IN SUBSECTION (1), THE INSTRUMENT IS
19 ALSO ISSUED FOR CONSIDERATION.

20 Sec. 3304. ~~(1) The purchaser has notice of a claim or~~
21 ~~defense if~~

22 ~~(a) the instrument is so incomplete, bears such visible evi-~~
23 ~~dence of forgery or alteration, or is otherwise so irregular as~~
24 ~~to call into question its validity, terms or ownership or to~~
25 ~~create an ambiguity as to the party to pay, or~~

1 ~~(b) the purchaser has notice that the obligation of any~~
2 ~~party is voidable in whole or in part, or that all parties have~~
3 ~~been discharged.~~

4 ~~(2) The purchaser has notice of a claim against the instru-~~
5 ~~ment when he has knowledge that a fiduciary has negotiated the~~
6 ~~instrument in payment of or as security for his own debt or in~~
7 ~~any transaction for his own benefit or otherwise in breach of~~
8 ~~duty.~~

9 ~~(3) The purchaser has notice that an instrument is overdue~~
10 ~~if he has reason to know~~

11 ~~(a) that any part of the principal amount is overdue or that~~
12 ~~there is an uncured default in payment of another instrument of~~
13 ~~the same series; or~~

14 ~~(b) that acceleration of the instrument has been made; or~~

15 ~~(c) that he is taking a demand instrument after demand has~~
16 ~~been made or more than a reasonable length of time after its~~
17 ~~issue. A reasonable time for a check drawn and payable within~~
18 ~~the states and territories of the United States and the District~~
19 ~~of Columbia is presumed to be 30 days.~~

20 ~~(4) Knowledge of the following facts does not of itself give~~
21 ~~the purchaser notice of a defense or claim.~~

22 ~~(a) that the instrument is antedated or postdated;~~

23 ~~(b) that it was issued or negotiated in return for an execu-~~
24 ~~tory promise or accompanied by a separate agreement, unless the~~
25 ~~purchaser has notice that a defense or claim has arisen from the~~
26 ~~terms thereof;~~

~~(c) that any party has signed for accommodation;~~

~~(d) that an incomplete instrument has been completed, unless~~

~~the purchaser has notice of any improper completion;~~

~~(e) that any person negotiating the instrument is or was a~~

~~fiduciary;~~

~~(f) that there has been default in payment of interest on~~

~~the instrument or in payment of any other instrument, except one~~

~~of the same series.~~

~~(5) The filing or recording of a document does not of itself~~

~~constitute notice within the provisions of this article to a~~

~~person who would otherwise be a holder in due course.~~

~~(6) To be effective notice must be received at such time and~~

~~in such manner as to give a reasonable opportunity to act on it.~~

(1) AN INSTRUMENT PAYABLE ON DEMAND BECOMES OVERDUE AT THE

EARLIEST OF THE FOLLOWING TIMES:

(A) ON THE DAY AFTER THE DAY DEMAND FOR PAYMENT IS DULY

MADE.

(B) IF THE INSTRUMENT IS A CHECK, 90 DAYS AFTER ITS DATE.

(C) IF THE INSTRUMENT IS NOT A CHECK, WHEN THE INSTRUMENT

HAS BEEN OUTSTANDING FOR A PERIOD OF TIME AFTER ITS DATE WHICH IS

UNREASONABLY LONG UNDER THE CIRCUMSTANCES OF THE PARTICULAR CASE

IN LIGHT OF THE NATURE OF THE INSTRUMENT AND USAGE OF THE TRADE.

(2) WITH RESPECT TO AN INSTRUMENT PAYABLE AT A DEFINITE

TIME, THE FOLLOWING RULES APPLY:

(A) IF THE PRINCIPAL IS PAYABLE IN INSTALLMENTS AND A DUE

DATE HAS NOT BEEN ACCELERATED, THE INSTRUMENT BECOMES OVERDUE

UPON DEFAULT UNDER THE INSTRUMENT FOR NONPAYMENT OF AN

1 INSTALLMENT, AND THE INSTRUMENT REMAINS OVERDUE UNTIL THE DEFAULT
2 IS CURED.

3 (B) IF THE PRINCIPAL IS NOT PAYABLE IN INSTALLMENTS AND THE
4 DUE DATE HAS NOT BEEN ACCELERATED, THE INSTRUMENT BECOMES OVERDUE
5 ON THE DAY AFTER THE DUE DATE.

6 (C) IF A DUE DATE WITH RESPECT TO PRINCIPAL HAS BEEN ACCEL-
7 ERATED, THE INSTRUMENT BECOMES OVERDUE ON THE DAY AFTER THE
8 ACCELERATED DUE DATE.

9 (3) UNLESS THE DUE DATE OF PRINCIPAL HAS BEEN ACCELERATED,
10 AN INSTRUMENT DOES NOT BECOME OVERDUE IF THERE IS DEFAULT IN PAY-
11 MENT OF INTEREST BUT NO DEFAULT IN PAYMENT OF PRINCIPAL.

12 Sec. 3305. ~~To the extent that a holder is a holder in due~~
13 ~~course he takes the instrument free from~~

14 ~~(1) all claims to it on the part of any person; and~~

15 ~~(2) all defenses of any party to the instrument with whom~~
16 ~~the holder has not dealt except~~

17 ~~(a) infancy, to the extent that it is a defense to a simple~~
18 ~~contract; and~~

19 ~~(b) such other incapacity, or duress, or illegality of the~~
20 ~~transaction, as renders the obligation of the party a nullity,~~
21 ~~and~~

22 ~~(c) such misrepresentation as has induced the party to sign~~
23 ~~the instrument with neither knowledge nor reasonable opportunity~~
24 ~~to obtain knowledge of its character or its essential terms; and~~

25 ~~(d) discharge in insolvency proceedings; and~~

26 ~~(e) any other discharge of which the holder has notice when~~
27 ~~he takes the instrument.~~ (1) EXCEPT AS STATED IN SUBSECTION (2),

1 THE RIGHT TO ENFORCE THE OBLIGATION OF A PARTY TO PAY AN
2 INSTRUMENT IS SUBJECT TO THE FOLLOWING:

3 (A) A DEFENSE OF THE OBLIGOR BASED ON (i) INFANCY OF THE
4 OBLIGOR TO THE EXTENT IT IS A DEFENSE TO A SIMPLE CONTRACT, (ii)
5 DURESS, LACK OF LEGAL CAPACITY, OR ILLEGALITY OF THE TRANSACTION
6 WHICH, UNDER OTHER LAW, NULLIFIES THE OBLIGATION OF THE OBLIGOR,
7 (iii) FRAUD THAT INDUCED THE OBLIGOR TO SIGN THE INSTRUMENT WITH
8 NEITHER KNOWLEDGE NOR REASONABLE OPPORTUNITY TO LEARN OF ITS
9 CHARACTER OR ITS ESSENTIAL TERMS, OR (iv) DISCHARGE OF THE OBLI-
10 GOR IN INSOLVENCY PROCEEDINGS.

11 (B) A DEFENSE OF THE OBLIGOR STATED IN ANOTHER SECTION OF
12 THIS ARTICLE OR A DEFENSE OF THE OBLIGOR THAT WOULD BE AVAILABLE
13 IF THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT WERE ENFORCING A
14 RIGHT TO PAYMENT UNDER A SIMPLE CONTRACT.

15 (C) A CLAIM IN RECOUPMENT OF THE OBLIGOR AGAINST THE ORIGI-
16 NAL PAYEE OF THE INSTRUMENT IF THE CLAIM AROSE FROM THE TRANSAC-
17 TION THAT GAVE RISE TO THE INSTRUMENT, BUT THE CLAIM OF THE OBLI-
18 GOR MAY BE ASSERTED AGAINST A TRANSFEREE OF THE INSTRUMENT ONLY
19 TO REDUCE THE AMOUNT OWING ON THE INSTRUMENT AT THE TIME THE
20 ACTION IS BROUGHT.

21 (2) THE RIGHT OF A HOLDER IN DUE COURSE TO ENFORCE THE OBLI-
22 GATION OF A PARTY TO PAY THE INSTRUMENT IS SUBJECT TO DEFENSES OF
23 THE OBLIGOR STATED IN SUBSECTION (1)(A), BUT IS NOT SUBJECT TO
24 DEFENSES OF THE OBLIGOR STATED IN SUBSECTION (1)(B) OR CLAIMS IN
25 RECOUPMENT STATED IN SUBSECTION (1)(C) AGAINST A PERSON OTHER
26 THAN THE HOLDER.

1 (3) EXCEPT AS STATED IN SUBSECTION (4), IN AN ACTION TO
2 ENFORCE THE OBLIGATION OF A PARTY TO PAY THE INSTRUMENT, THE
3 OBLIGOR MAY NOT ASSERT AGAINST THE PERSON ENTITLED TO ENFORCE THE
4 INSTRUMENT A DEFENSE, CLAIM IN RECOUPMENT, OR CLAIM TO THE
5 INSTRUMENT IN SECTION 3306 OF ANOTHER PERSON, BUT THE OTHER
6 PERSON'S CLAIM TO THE INSTRUMENT MAY BE ASSERTED BY THE OBLIGOR
7 IF THE OTHER PERSON IS JOINED IN THE ACTION AND PERSONALLY
8 ASSERTS THE CLAIM AGAINST THE PERSON ENTITLED TO ENFORCE THE
9 INSTRUMENT. AN OBLIGOR IS NOT OBLIGED TO PAY THE INSTRUMENT IF
10 THE PERSON SEEKING ENFORCEMENT OF THE INSTRUMENT DOES NOT HAVE
11 RIGHTS OF A HOLDER IN DUE COURSE AND THE OBLIGOR PROVES THAT THE
12 INSTRUMENT IS A LOST OR STOLEN INSTRUMENT.

13 (4) IN AN ACTION TO ENFORCE THE OBLIGATION OF AN ACCOMMODA-
14 TION PARTY TO PAY AN INSTRUMENT, THE ACCOMMODATION PARTY MAY
15 ASSERT AGAINST THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT ANY
16 DEFENSE OR CLAIM IN RECOUPMENT UNDER SUBSECTION (1) THAT THE
17 ACCOMMODATED PARTY COULD ASSERT AGAINST THE PERSON ENTITLED TO
18 ENFORCE THE INSTRUMENT, EXCEPT THE DEFENSES OF DISCHARGE IN
19 INSOLVENCY PROCEEDINGS, INFANCY, AND LACK OF LEGAL CAPACITY.

20 Sec. 3306. ~~Unless he has the rights of a holder in due~~
21 ~~course any person takes the instrument subject to~~

22 ~~(a) all valid claims to it on the part of any person; and~~

23 ~~(b) all defenses of any party which would be available in an~~
24 ~~action on a simple contract; and~~

25 ~~(c) the defenses of want or failure of consideration, non-~~
26 ~~performance of any condition precedent, nondelivery, or delivery~~
27 ~~for a special purpose (section 3408); and~~

1 ~~(d) the defense that he or a person through whom he holds~~
2 ~~the instrument acquired it by theft, or that payment or satisfac-~~
3 ~~tion to such holder would be inconsistent with the terms of a~~
4 ~~restrictive indorsement. The claim of any third person to the~~
5 ~~instrument is not otherwise available as a defense to any party~~
6 ~~liable thereon unless the third person himself defends the action~~
7 ~~for such party.~~ A PERSON TAKING AN INSTRUMENT, OTHER THAN A
8 PERSON HAVING RIGHTS OF A HOLDER IN DUE COURSE, IS SUBJECT TO A
9 CLAIM OF A PROPERTY OR POSSESSORY RIGHT IN THE INSTRUMENT OR ITS
10 PROCEEDS, INCLUDING A CLAIM TO RESCIND A NEGOTIATION AND TO
11 RECOVER THE INSTRUMENT OR ITS PROCEEDS. A PERSON HAVING RIGHTS
12 OF A HOLDER IN DUE COURSE TAKES FREE OF THE CLAIM TO THE
13 INSTRUMENT.

14 Sec. 3307. ~~(1) Unless specifically denied in the pleading~~
15 ~~each signature on an instrument is admitted. When the effective-~~
16 ~~ness of a signature is put in issue~~

17 ~~(a) the burden of establishing it is on the party claiming~~
18 ~~under the signature; but~~

19 ~~(b) the signature is presumed to be genuine or authorized~~
20 ~~except where the action is to enforce the obligation of a pur-~~
21 ~~ported signer who has died or become incompetent before proof is~~
22 ~~required.~~

23 ~~(2) When signatures are admitted or established, production~~
24 ~~of the instrument entitles a holder to recover on it unless the~~
25 ~~defendant establishes a defense.~~

26 ~~(3) After it is shown that a defense exists a person~~
27 ~~claiming the rights of a holder in due course has the burden of~~

~~1 establishing that he or some person under whom he claims is in~~
~~2 all respects a holder in due course.~~

3 (1) AS USED IN THIS SECTION:

4 (A) "FIDUCIARY" MEANS AN AGENT, TRUSTEE, PARTNER, CORPORATE
5 OFFICER OR DIRECTOR, OR OTHER REPRESENTATIVE OWING A FIDUCIARY
6 DUTY WITH RESPECT TO AN INSTRUMENT.

7 (B) "REPRESENTED PERSON" MEANS THE PRINCIPAL, BENEFICIARY,
8 PARTNERSHIP, CORPORATION, OR OTHER PERSON TO WHOM THE DUTY STATED
9 IN SUBDIVISION (A) IS OWNED.

10 (2) IF (i) AN INSTRUMENT IS TAKEN FROM A FIDUCIARY FOR PAY-
11 MENT OR COLLECTION OR FOR VALUE, (ii) THE TAKER HAS KNOWLEDGE OF
12 THE FIDUCIARY STATUS OF THE FIDUCIARY, AND (iii) THE REPRESENTED
13 PERSON MAKES A CLAIM TO THE INSTRUMENT OR ITS PROCEEDS ON THE
14 BASIS THAT THE TRANSACTION OF THE FIDUCIARY IS A BREACH OF FIDU-
15 CIARY DUTY, THE FOLLOWING RULES APPLY:

16 (A) NOTICE OF BREACH OF FIDUCIARY DUTY BY THE FIDUCIARY IS
17 NOTICE OF THE CLAIM OF THE REPRESENTED PERSON.

18 (B) IN THE CASE OF AN INSTRUMENT PAYABLE TO THE REPRESENTED
19 PERSON OR THE FIDUCIARY AS SUCH, THE TAKER HAS NOTICE OF THE
20 BREACH OF FIDUCIARY DUTY IF THE INSTRUMENT IS (i) TAKEN IN PAY-
21 MENT OF OR AS SECURITY FOR A DEBT KNOWN BY THE TAKER TO BE THE
22 PERSONAL DEBT OF THE FIDUCIARY, (ii) TAKEN IN A TRANSACTION KNOWN
23 BY THE TAKER TO BE FOR THE PERSONAL BENEFIT OF THE FIDUCIARY, OR
24 (iii) DEPOSITED TO AN ACCOUNT OTHER THAN AN ACCOUNT OF THE FIDU-
25 CIARY, AS SUCH, OR AN ACCOUNT OF THE REPRESENTED PERSON.

26 (C) IF AN INSTRUMENT IS ISSUED BY THE REPRESENTED PERSON OR
27 THE FIDUCIARY AS SUCH, AND MADE PAYABLE TO THE FIDUCIARY

1 PERSONALLY, THE TAKER DOES NOT HAVE NOTICE OF THE BREACH OF
2 FIDUCIARY DUTY UNLESS THE TAKER KNOWS OF THE BREACH OF FIDUCIARY
3 DUTY.

4 (D) IF AN INSTRUMENT IS ISSUED BY THE REPRESENTED PERSON OR
5 THE FIDUCIARY AS SUCH, TO THE TAKER AS PAYEE, THE TAKER HAS
6 NOTICE OF THE BREACH OF FIDUCIARY DUTY IF THE INSTRUMENT IS (i)
7 TAKEN IN PAYMENT OF OR AS SECURITY FOR A DEBT KNOWN BY THE TAKER
8 TO BE THE PERSONAL DEBT OF THE FIDUCIARY, (ii) TAKEN IN A TRANS-
9 ACTION KNOWN BY THE TAKER TO BE FOR THE PERSONAL BENEFIT OF THE
10 FIDUCIARY, OR (iii) DEPOSITED TO AN ACCOUNT OTHER THAN AN ACCOUNT
11 OF THE FIDUCIARY, AS SUCH, OR AN ACCOUNT OF THE REPRESENTED
12 PERSON.

13 SEC. 3308. (1) IN AN ACTION WITH RESPECT TO AN INSTRUMENT,
14 THE AUTHENTICITY OF, AND AUTHORITY TO MAKE, EACH SIGNATURE ON THE
15 INSTRUMENT IS ADMITTED UNLESS SPECIFICALLY DENIED IN THE
16 PLEADINGS. IF THE VALIDITY OF A SIGNATURE IS DENIED IN THE
17 PLEADINGS, THE BURDEN OF ESTABLISHING VALIDITY IS ON THE PERSON
18 CLAIMING VALIDITY, BUT THE SIGNATURE IS PRESUMED TO BE AUTHENTIC
19 AND AUTHORIZED UNLESS THE ACTION IS TO ENFORCE THE LIABILITY OF
20 THE PURPORTED SIGNER AND THE SIGNER IS DEAD OR INCOMPETENT AT THE
21 TIME OF TRIAL OF THE ISSUE OF VALIDITY OF THE SIGNATURE. IF AN
22 ACTION TO ENFORCE THE INSTRUMENT IS BROUGHT AGAINST A PERSON AS
23 THE UNDISCLOSED PRINCIPAL OF A PERSON WHO SIGNED THE INSTRUMENT
24 AS A PARTY TO THE INSTRUMENT, THE PLAINTIFF HAS THE BURDEN OF
25 ESTABLISHING THAT THE DEFENDANT IS LIABLE ON THE INSTRUMENT AS A
26 REPRESENTED PERSON UNDER SECTION 3402(1).

1 (2) IF THE VALIDITY OF SIGNATURES IS ADMITTED OR PROVED AND
2 THERE IS COMPLIANCE WITH SUBSECTION (1), A PLAINTIFF PRODUCING
3 THE INSTRUMENT IS ENTITLED TO PAYMENT IF THE PLAINTIFF PROVES
4 ENTITLEMENT TO ENFORCE THE INSTRUMENT UNDER SECTION 3301, UNLESS
5 THE DEFENDANT PROVES A DEFENSE OR CLAIM IN RECOUPMENT. IF A
6 DEFENSE OR CLAIM IN RECOUPMENT IS PROVED, THE RIGHT TO PAYMENT OF
7 THE PLAINTIFF IS SUBJECT TO THE DEFENSE OR CLAIM, EXCEPT TO THE
8 EXTENT THE PLAINTIFF PROVES THAT THE PLAINTIFF HAS RIGHTS OF A
9 HOLDER IN DUE COURSE WHICH ARE NOT SUBJECT TO THE DEFENSE OR
10 CLAIM.

11 SEC. 3309. (1) A PERSON NOT IN POSSESSION OF AN INSTRUMENT
12 IS ENTITLED TO ENFORCE THE INSTRUMENT IF (i) THE PERSON WAS IN
13 POSSESSION OF THE INSTRUMENT AND ENTITLED TO ENFORCE IT WHEN LOSS
14 OF POSSESSION OCCURRED, (ii) THE LOSS OF POSSESSION WAS NOT THE
15 RESULT OF A TRANSFER BY THE PERSON OR A LAWFUL SEIZURE, AND (iii)
16 THE PERSON CANNOT REASONABLY OBTAIN POSSESSION OF THE INSTRUMENT
17 BECAUSE THE INSTRUMENT WAS DESTROYED, ITS WHEREABOUTS CANNOT BE
18 DETERMINED, OR IT IS IN THE WRONGFUL POSSESSION OF AN UNKNOWN
19 PERSON OR A PERSON THAT CANNOT BE FOUND OR IS NOT AMENABLE TO
20 SERVICE OF PROCESS.

21 (2) A PERSON SEEKING ENFORCEMENT OF AN INSTRUMENT UNDER
22 SUBSECTION (1) MUST PROVE THE TERMS OF THE INSTRUMENT AND THE
23 PERSON'S RIGHT TO ENFORCE THE INSTRUMENT. IF THAT PROOF IS MADE,
24 SECTION 3308 APPLIES TO THE CASE AS IF THE PERSON SEEKING
25 ENFORCEMENT HAD PRODUCED THE INSTRUMENT. THE COURT MAY NOT ENTER
26 JUDGMENT IN FAVOR OF THE PERSON SEEKING ENFORCEMENT UNLESS IT
27 FINDS THAT THE PERSON REQUIRED TO PAY THE INSTRUMENT IS

1 ADEQUATELY PROTECTED AGAINST LOSS THAT MIGHT OCCUR BY REASON OF A
2 CLAIM BY ANOTHER PERSON TO ENFORCE THE INSTRUMENT. ADEQUATE PRO-
3 TECTION MAY BE PROVIDED BY ANY REASONABLE MEANS.

4 SEC. 3310. (1) UNLESS OTHERWISE AGREED, IF A CERTIFIED
5 CHECK, CASHIER'S CHECK, OR TELLER'S CHECK IS TAKEN FOR AN OBLIGA-
6 TION, THE OBLIGATION IS DISCHARGED TO THE SAME EXTENT DISCHARGE
7 WOULD RESULT IF AN AMOUNT OF MONEY EQUAL TO THE AMOUNT OF THE
8 INSTRUMENT WERE TAKEN IN PAYMENT OF THE OBLIGATION. DISCHARGE OF
9 THE OBLIGATION DOES NOT AFFECT ANY LIABILITY THAT THE OBLIGOR MAY
10 HAVE AS AN ENDORSER OF THE INSTRUMENT.

11 (2) UNLESS OTHERWISE AGREED AND EXCEPT AS PROVIDED IN
12 SUBSECTION (1), IF A NOTE OR AN UNCERTIFIED CHECK IS TAKEN FOR AN
13 OBLIGATION, THE OBLIGATION IS SUSPENDED TO THE SAME EXTENT THE
14 OBLIGATION WOULD BE DISCHARGED IF AN AMOUNT OF MONEY EQUAL TO THE
15 AMOUNT OF THE INSTRUMENT WERE TAKEN, AND THE FOLLOWING RULES
16 APPLY:

17 (A) IN THE CASE OF AN UNCERTIFIED CHECK, SUSPENSION OF THE
18 OBLIGATION CONTINUES UNTIL DISHONOR OF THE CHECK OR UNTIL IT IS
19 PAID OR CERTIFIED. PAYMENT OR CERTIFICATION OF THE CHECK RESULTS
20 IN DISCHARGE OF THE OBLIGATION TO THE EXTENT OF THE AMOUNT OF THE
21 CHECK.

22 (B) IN THE CASE OF A NOTE, SUSPENSION OF THE OBLIGATION CON-
23 TINUES UNTIL DISHONOR OF THE NOTE OR UNTIL IT IS PAID. PAYMENT
24 OF THE NOTE RESULTS IN DISCHARGE OF THE OBLIGATION TO THE EXTENT
25 OF THE PAYMENT.

26 (C) EXCEPT AS PROVIDED IN SUBDIVISION (D), IF THE CHECK OR
27 NOTE IS DISHONORED AND THE OBLIGEE OF THE OBLIGATION FOR WHICH

1 THE INSTRUMENT WAS TAKEN IS THE PERSON ENTITLED TO ENFORCE THE
2 INSTRUMENT, THE OBLIGEE MAY ENFORCE EITHER THE INSTRUMENT OR THE
3 OBLIGATION. IN THE CASE OF AN INSTRUMENT OF A THIRD PERSON WHICH
4 IS NEGOTIATED TO THE OBLIGEE BY THE OBLIGOR, DISCHARGE OF THE
5 OBLIGOR ON THE INSTRUMENT ALSO DISCHARGES THE OBLIGATION.

6 (D) IF THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT TAKEN
7 FOR AN OBLIGATION IS A PERSON OTHER THAN THE OBLIGEE, THE OBLIGEE
8 MAY NOT ENFORCE THE OBLIGATION TO THE EXTENT THE OBLIGATION IS
9 SUSPENDED. IF THE OBLIGEE IS THE PERSON ENTITLED TO ENFORCE THE
10 INSTRUMENT BUT NO LONGER HAS POSSESSION OF IT BECAUSE IT WAS
11 LOST, STOLEN, OR DESTROYED, THE OBLIGATION MAY NOT BE ENFORCED TO
12 THE EXTENT OF THE AMOUNT PAYABLE ON THE INSTRUMENT, AND TO THAT
13 EXTENT THE OBLIGEE'S RIGHTS AGAINST THE OBLIGOR ARE LIMITED TO
14 ENFORCEMENT OF THE INSTRUMENT.

15 (3) IF AN INSTRUMENT OTHER THAN ONE DESCRIBED IN
16 SUBSECTION (1) OR (2) IS TAKEN FOR AN OBLIGATION, THE EFFECT IS
17 (i) THAT STATED IN SUBSECTION (1) IF THE INSTRUMENT IS ONE ON
18 WHICH A BANK IS LIABLE AS MAKER OR ACCEPTOR, OR (ii) THAT STATED
19 IN SUBSECTION (2) IN ANY OTHER CASE.

20 SEC. 3311. (1) IF A PERSON AGAINST WHOM A CLAIM IS ASSERTED
21 PROVES THAT (i) THAT PERSON IN GOOD FAITH TENDERED AN INSTRUMENT
22 TO THE CLAIMANT AS FULL SATISFACTION OF THE CLAIM, (ii) THE
23 AMOUNT OF THE CLAIM WAS UNLIQUIDATED OR SUBJECT TO A BONA FIDE
24 DISPUTE, AND (iii) THE CLAIMANT OBTAINED PAYMENT OF THE INSTRU-
25 MENT, THE FOLLOWING SUBSECTIONS APPLY.

26 (2) UNLESS SUBSECTION (3) APPLIES, THE CLAIM IS DISCHARGED
27 IF THE PERSON AGAINST WHOM THE CLAIM IS ASSERTED PROVES THAT THE

1 INSTRUMENT OR AN ACCOMPANYING WRITTEN COMMUNICATION CONTAINED A
2 CONSPICUOUS STATEMENT TO THE EFFECT THAT THE INSTRUMENT WAS
3 TENDERED AS FULL SATISFACTION OF THE CLAIM.

4 (3) SUBJECT TO SUBSECTION (4), A CLAIM IS NOT DISCHARGED
5 UNDER SUBSECTION (2) IF EITHER OF THE FOLLOWING APPLIES:

6 (A) THE CLAIMANT, IF AN ORGANIZATION, PROVES THAT (i) WITHIN
7 A REASONABLE TIME BEFORE THE TENDER, THE CLAIMANT SENT A CONSPIC-
8 UOUS STATEMENT TO THE PERSON AGAINST WHOM THE CLAIM IS ASSERTED
9 THAT COMMUNICATIONS CONCERNING DISPUTED DEBTS, INCLUDING AN
10 INSTRUMENT TENDERED AS FULL SATISFACTION OF A DEBT, ARE TO BE
11 SENT TO A DESIGNATED PERSON, OFFICE, OR PLACE, AND (ii) THE
12 INSTRUMENT OR ACCOMPANYING COMMUNICATION WAS NOT RECEIVED BY THAT
13 DESIGNATED PERSON, OFFICE, OR PLACE.

14 (B) THE CLAIMANT, WHETHER OR NOT AN ORGANIZATION, PROVES
15 THAT WITHIN 90 DAYS AFTER PAYMENT OF THE INSTRUMENT, THE CLAIMANT
16 TENDERED REPAYMENT OF THE AMOUNT OF THE INSTRUMENT TO THE PERSON
17 AGAINST WHOM THE CLAIM IS ASSERTED. THIS SUBDIVISION DOES NOT
18 APPLY IF THE CLAIMANT IS AN ORGANIZATION THAT SENT A STATEMENT
19 COMPLYING WITH SUBDIVISION (A)(i).

20 (4) A CLAIM IS DISCHARGED IF THE PERSON AGAINST WHOM THE
21 CLAIM IS ASSERTED PROVES THAT WITHIN A REASONABLE TIME BEFORE
22 COLLECTION OF THE INSTRUMENT WAS INITIATED, THE CLAIMANT, OR AN
23 AGENT OF THE CLAIMANT HAVING DIRECT RESPONSIBILITY WITH RESPECT
24 TO THE DISPUTED OBLIGATION, KNEW THAT THE INSTRUMENT WAS TENDERED
25 IN FULL SATISFACTION OF THE CLAIM.

26 SEC. 3312. (1) AS USED IN THIS SECTION:

1 (A) "CHECK" MEANS A CASHIER'S CHECK, TELLER'S CHECK, OR
2 CERTIFIED CHECK.

3 (B) "CLAIMANT" MEANS A PERSON WHO CLAIMS THE RIGHT TO
4 RECEIVE THE AMOUNT OF A CASHIER'S CHECK, TELLER'S CHECK, OR CER-
5 TIFIED CHECK THAT WAS LOST, DESTROYED, OR STOLEN.

6 (C) "DECLARATION OF LOSS" MEANS A WRITTEN STATEMENT, MADE
7 UNDER PENALTY OF PERJURY, TO THE EFFECT THAT ALL OF THE FOLLOWING
8 APPLY:

9 (i) THE DECLARER LOST POSSESSION OF A CHECK.

10 (ii) THE DECLARER IS THE DRAWER OR PAYEE OF THE CHECK IN THE
11 CASE OF A CERTIFIED CHECK, OR THE REMITTER OR PAYEE OF THE CHECK
12 IN THE CASE OF A CASHIER'S CHECK OR TELLER'S CHECK.

13 (iii) THE LOSS OF POSSESSION WAS NOT THE RESULT OF A TRANS-
14 FER BY THE DECLARER OR A LAWFUL SEIZURE.

15 (iv) THE DECLARER CANNOT REASONABLY OBTAIN POSSESSION OF THE
16 CHECK BECAUSE THE CHECK WAS DESTROYED, ITS WHEREABOUTS CANNOT BE
17 DETERMINED, OR IT IS IN THE WRONGFUL POSSESSION OF AN UNKNOWN
18 PERSON OR A PERSON THAT CANNOT BE FOUND OR IS NOT AMENABLE TO
19 SERVICE OF PROCESS.

20 (D) "OBLIGATED BANK" MEANS THE ISSUER OF A CASHIER'S CHECK
21 OR TELLER'S CHECK OR THE ACCEPTOR OF A CERTIFIED CHECK.

22 (2) A CLAIMANT MAY ASSERT A CLAIM TO THE AMOUNT OF A CHECK
23 BY A COMMUNICATION TO THE OBLIGATED BANK DESCRIBING THE CHECK
24 WITH REASONABLE CERTAINTY AND REQUESTING PAYMENT OF THE AMOUNT OF
25 THE CHECK IF ALL OF THE FOLLOWING APPLY:

26 (A) THE CLAIMANT IS THE DRAWER OR PAYEE OF A CERTIFIED CHECK
27 OR THE REMITTER OR PAYEE OF A CASHIER'S CHECK OR TELLER'S CHECK.

1 (B) THE COMMUNICATION CONTAINS OR IS ACCOMPANIED BY A
2 DECLARATION OF LOSS OF THE CLAIMANT WITH RESPECT TO THE CHECK.

3 (C) THE COMMUNICATION IS RECEIVED AT A TIME AND IN A MANNER
4 AFFORDING THE BANK A REASONABLE TIME TO ACT ON IT BEFORE THE
5 CHECK IS PAID.

6 (D) THE CLAIMANT PROVIDES REASONABLE IDENTIFICATION IF
7 REQUESTED BY THE OBLIGATED BANK.

8 (3) DELIVERY OF A DECLARATION OF LOSS IS A WARRANTY OF THE
9 TRUTH OF THE STATEMENTS MADE IN THE DECLARATION.

10 (4) IF A CLAIM IS ASSERTED IN COMPLIANCE WITH
11 SUBSECTION (2), THE FOLLOWING RULES APPLY:

12 (A) THE CLAIM BECOMES ENFORCEABLE AT THE LATER OF THE
13 FOLLOWING:

14 (i) THE TIME THE CLAIM IS ASSERTED.

15 (ii) THE 90TH DAY FOLLOWING THE DATE OF THE CHECK IN THE
16 CASE OF A CASHIER'S CHECK OR TELLER'S CHECK, OR THE 90TH DAY FOL-
17 LOWING THE DATE OF THE ACCEPTANCE IN THE CASE OF A CERTIFIED
18 CHECK.

19 (B) UNTIL THE CLAIM BECOMES ENFORCEABLE, IT HAS NO LEGAL
20 EFFECT AND THE OBLIGATED BANK MAY PAY THE CHECK OR, IN THE CASE
21 OF A TELLER'S CHECK, MAY PERMIT THE DRAWEE TO PAY THE CHECK.
22 PAYMENT TO A PERSON ENTITLED TO ENFORCE THE CHECK DISCHARGES ALL
23 LIABILITY OF THE OBLIGATED BANK WITH RESPECT TO THE CHECK.

24 (C) IF THE CLAIM BECOMES ENFORCEABLE BEFORE THE CHECK IS
25 PRESENTED FOR PAYMENT, THE OBLIGATED BANK IS NOT OBLIGED TO PAY
26 THE CHECK.

1 (D) WHEN THE CLAIM BECOMES ENFORCEABLE, THE OBLIGATED BANK
2 BECOMES OBLIGED TO PAY THE AMOUNT OF THE CHECK TO THE CLAIMANT IF
3 PAYMENT OF THE CHECK HAS NOT BEEN MADE TO A PERSON ENTITLED TO
4 ENFORCE THE CHECK. SUBJECT TO SECTION 4302(1)(A), PAYMENT TO THE
5 CLAIMANT DISCHARGES ALL LIABILITY OF THE OBLIGATED BANK WITH
6 RESPECT TO THE CHECK.

7 (5) IF THE OBLIGATED BANK PAYS THE AMOUNT OF A CHECK TO A
8 CLAIMANT UNDER SUBSECTION (4)(D) AND THE CHECK IS PRESENTED FOR
9 PAYMENT BY A PERSON HAVING RIGHTS OF A HOLDER IN DUE COURSE, THE
10 CLAIMANT IS OBLIGED TO DO BOTH OF THE FOLLOWING:

11 (A) REFUND THE PAYMENT TO THE OBLIGATED BANK IF THE CHECK IS
12 PAID.

13 (B) PAY THE AMOUNT OF THE CHECK TO THE PERSON HAVING RIGHTS
14 OF A HOLDER IN DUE COURSE IF THE CHECK IS DISHONORED.

15 (6) IF A CLAIMANT HAS THE RIGHT TO ASSERT A CLAIM UNDER
16 SUBSECTION (2) AND IS ALSO A PERSON ENTITLED TO ENFORCE A
17 CASHIER'S CHECK, TELLER'S CHECK, OR CERTIFIED CHECK WHICH IS
18 LOST, DESTROYED, OR STOLEN, THE CLAIMANT MAY ASSERT RIGHTS WITH
19 RESPECT TO THE CHECK EITHER UNDER THIS SECTION OR SECTION 3309.

20 Sec. 3401. ~~(1) No person is liable on an instrument unless~~
21 ~~his signature appears thereon.~~

22 ~~(2) A signature is made by use of any name, including any~~
23 ~~trade or assumed name, upon an instrument, or by any word or mark~~
24 ~~used in lieu of a written signature.~~ (1) A PERSON IS NOT LIABLE
25 ON AN INSTRUMENT UNLESS (i) THE PERSON SIGNED THE INSTRUMENT, OR
26 (ii) THE PERSON IS REPRESENTED BY AN AGENT OR REPRESENTATIVE WHO

1 SIGNED THE INSTRUMENT AND THE SIGNATURE IS BINDING ON THE
2 REPRESENTED PERSON UNDER SECTION 3402.

3 (2) A SIGNATURE MAY BE MADE (i) MANUALLY OR BY MEANS OF A
4 DEVICE OR MACHINE, AND (ii) BY THE USE OF ANY NAME, INCLUDING A
5 TRADE OR ASSUMED NAME, OR BY A WORD, MARK, OR SYMBOL EXECUTED OR
6 ADOPTED BY A PERSON WITH PRESENT INTENTION TO AUTHENTICATE A
7 WRITING.

8 Sec. 3402. ~~Unless the instrument clearly indicates that a~~
9 ~~signature is made in some other capacity it is an indorsement.~~

10 (1) IF A PERSON ACTING, OR PURPORTING TO ACT, AS A REPRESENTATIVE
11 SIGNS AN INSTRUMENT BY SIGNING EITHER THE NAME OF THE REPRESENTED
12 PERSON OR THE NAME OF THE SIGNER, THE REPRESENTED PERSON IS BOUND
13 BY THE SIGNATURE TO THE SAME EXTENT THE REPRESENTED PERSON WOULD
14 BE BOUND IF THE SIGNATURE WERE ON A SIMPLE CONTRACT. IF THE REP-
15 RESENTED PERSON IS BOUND, THE SIGNATURE OF THE REPRESENTATIVE IS
16 THE "AUTHORIZED SIGNATURE OF THE REPRESENTED PERSON" AND THE REP-
17 RESENTED PERSON IS LIABLE ON THE INSTRUMENT, WHETHER OR NOT IDEN-
18 TIFIED IN THE INSTRUMENT.

19 (2) IF A REPRESENTATIVE SIGNS THE NAME OF THE REPRESENTATIVE
20 TO AN INSTRUMENT AND THE SIGNATURE IS AN AUTHORIZED SIGNATURE OF
21 THE REPRESENTED PERSON, THE FOLLOWING RULES APPLY:

22 (A) IF THE FORM OF THE SIGNATURE SHOWS UNAMBIGUOUSLY THAT
23 THE SIGNATURE IS MADE ON BEHALF OF THE REPRESENTED PERSON WHO IS
24 IDENTIFIED IN THE INSTRUMENT, THE REPRESENTATIVE IS NOT LIABLE ON
25 THE INSTRUMENT.

26 (B) SUBJECT TO SUBSECTION (3), IF (i) THE FORM OF THE
27 SIGNATURE DOES NOT SHOW UNAMBIGUOUSLY THAT THE SIGNATURE IS MADE

1 IN A REPRESENTATIVE CAPACITY OR (ii) THE REPRESENTED PERSON IS
2 NOT IDENTIFIED IN THE INSTRUMENT, THE REPRESENTATIVE IS LIABLE ON
3 THE INSTRUMENT TO A HOLDER IN DUE COURSE THAT TOOK THE INSTRUMENT
4 WITHOUT NOTICE THAT THE REPRESENTATIVE WAS NOT INTENDED TO BE
5 LIABLE ON THE INSTRUMENT. WITH RESPECT TO ANY OTHER PERSON, THE
6 REPRESENTATIVE IS LIABLE ON THE INSTRUMENT UNLESS THE REPRESENTA-
7 TIVE PROVES THAT THE ORIGINAL PARTIES DID NOT INTEND THE REPRE-
8 SENTATIVE TO BE LIABLE ON THE INSTRUMENT.

9 (3) IF A REPRESENTATIVE SIGNS THE NAME OF THE REPRESENTATIVE
10 AS DRAWER OF A CHECK WITHOUT INDICATION OF THE REPRESENTATIVE
11 STATUS AND THE CHECK IS PAYABLE FROM AN ACCOUNT OF THE REPRE-
12 SENTED PERSON WHO IS IDENTIFIED ON THE CHECK, THE SIGNER IS NOT
13 LIABLE ON THE CHECK IF THE SIGNATURE IS AN AUTHORIZED SIGNATURE
14 OF THE REPRESENTED PERSON.

15 Sec. 3403. ~~(1) A signature may be made by an agent or~~
16 ~~other representative, and his authority to make it may be estab-~~
17 ~~lished as in other cases of representation. No particular form~~
18 ~~of appointment is necessary to establish such authority.~~

19 ~~(2) An authorized representative who signs his own name to~~
20 ~~an instrument~~

21 ~~(a) is personally obligated if the instrument neither names~~
22 ~~the person represented nor shows that the representative signed~~
23 ~~in a representative capacity;~~

24 ~~(b) except as otherwise established between the immediate~~
25 ~~parties, is personally obligated if the instrument names the~~
26 ~~person represented but does not show that the representative~~
27 ~~signed in a representative capacity, or if the instrument does~~

1 ~~not name the person represented but does show that the~~
2 ~~representative signed in a representative capacity.~~

3 ~~(3) Except as otherwise established the name of an organi-~~
4 ~~zation preceded or followed by the name and office of an autho-~~
5 ~~rized individual is a signature made in a representative~~
6 ~~capacity.~~ (1) UNLESS OTHERWISE PROVIDED IN THIS ARTICLE OR ARTI-
7 CLE 4, AN UNAUTHORIZED SIGNATURE IS INEFFECTIVE EXCEPT AS THE
8 SIGNATURE OF THE UNAUTHORIZED SIGNER IN FAVOR OF A PERSON WHO IN
9 GOOD FAITH PAYS THE INSTRUMENT OR TAKES IT FOR VALUE. AN UNAU-
10 THORIZED SIGNATURE MAY BE RATIFIED FOR ALL PURPOSES OF THIS
11 ARTICLE.

12 (2) IF THE SIGNATURE OF MORE THAN 1 PERSON IS REQUIRED TO
13 CONSTITUTE THE AUTHORIZED SIGNATURE OF AN ORGANIZATION, THE SIG-
14 NATURE OF THE ORGANIZATION IS UNAUTHORIZED IF 1 OF THE REQUIRED
15 SIGNATURES IS LACKING.

16 (3) THE CIVIL OR CRIMINAL LIABILITY OF A PERSON WHO MAKES AN
17 UNAUTHORIZED SIGNATURE IS NOT AFFECTED BY ANY PROVISION OF THIS
18 ARTICLE WHICH MAKES THE UNAUTHORIZED SIGNATURE EFFECTIVE FOR THE
19 PURPOSES OF THIS ARTICLE.

20 Sec. 3404. ~~(1) Any unauthorized signature is wholly inop-~~
21 ~~erative as that of the person whose name is signed unless he~~
22 ~~ratifies it or is precluded from denying it; but it operates as~~
23 ~~the signature of the unauthorized signer in favor of any person~~
24 ~~who in good faith pays the instrument or takes it for value.~~

25 ~~(2) Any unauthorized signature may be ratified for all pur-~~
26 ~~poses of this article. Such ratification does not of itself~~
27 ~~affect any rights of the person ratifying against the actual~~

1 ~~signer.~~ (1) IF AN IMPOSTER, BY USE OF THE MAILS OR OTHERWISE,
2 INDUCES THE ISSUER OF AN INSTRUMENT TO ISSUE THE INSTRUMENT TO
3 THE IMPOSTER, OR TO A PERSON ACTING IN CONCERT WITH THE IMPOSTER,
4 BY IMPERSONATING THE PAYEE OF THE INSTRUMENT OR A PERSON AUTHO-
5 RIZED TO ACT FOR THE PAYEE, AN ENDORSEMENT OF THE INSTRUMENT BY
6 ANY PERSON IN THE NAME OF THE PAYEE IS EFFECTIVE AS THE ENDORSE-
7 MENT OF THE PAYEE IN FAVOR OF A PERSON WHO, IN GOOD FAITH, PAYS
8 THE INSTRUMENT OR TAKES IT FOR VALUE OR FOR COLLECTION.

9 (2) IF (i) A PERSON WHOSE INTENT DETERMINES TO WHOM AN
10 INSTRUMENT IS PAYABLE IN SECTION 3110(1) OR (2) DOES NOT INTEND
11 THE PERSON IDENTIFIED AS PAYEE TO HAVE ANY INTEREST IN THE
12 INSTRUMENT, OR (ii) THE PERSON IDENTIFIED AS PAYEE OF AN INSTRU-
13 MENT IS A FICTITIOUS PERSON, THE FOLLOWING RULES APPLY UNTIL THE
14 INSTRUMENT IS NEGOTIATED BY SPECIAL ENDORSEMENT:

15 (A) ANY PERSON IN POSSESSION OF THE INSTRUMENT IS ITS
16 HOLDER.

17 (B) AN ENDORSEMENT BY ANY PERSON IN THE NAME OF THE PAYEE
18 STATED IN THE INSTRUMENT IS EFFECTIVE AS THE ENDORSEMENT OF THE
19 PAYEE IN FAVOR OF A PERSON WHO, IN GOOD FAITH, PAYS THE INSTRU-
20 MENT OR TAKES IT FOR VALUE OR FOR COLLECTION.

21 (3) UNDER SUBSECTION (1) OR (2), AN ENDORSEMENT IS MADE IN
22 THE NAME OF A PAYEE IF (i) IT IS MADE IN A NAME SUBSTANTIALLY
23 SIMILAR TO THAT OF THE PAYEE OR (ii) THE INSTRUMENT, WHETHER OR
24 NOT ENDORSED, IS DEPOSITED IN A DEPOSITARY BANK TO AN ACCOUNT IN
25 A NAME SUBSTANTIALLY SIMILAR TO THAT OF THE PAYEE.

26 (4) WITH RESPECT TO AN INSTRUMENT TO WHICH SUBSECTION (1) OR
27 (2) APPLIES, IF A PERSON PAYING THE INSTRUMENT OR TAKING IT FOR

1 VALUE OR FOR COLLECTION FAILS TO EXERCISE ORDINARY CARE IN PAYING
2 OR TAKING THE INSTRUMENT AND THAT FAILURE SUBSTANTIALLY CONTRIB-
3 UTES TO LOSS RESULTING FROM PAYMENT OF THE INSTRUMENT, THE PERSON
4 BEARING THE LOSS MAY RECOVER FROM THE PERSON FAILING TO EXERCISE
5 ORDINARY CARE TO THE EXTENT THE FAILURE TO EXERCISE ORDINARY CARE
6 CONTRIBUTED TO THE LOSS.

7 Sec. 3405. ~~(1) An indorsement by any person in the name of~~
8 ~~a named payee is effective if~~

9 ~~(a) an imposter by use of the mails or otherwise has induced~~
10 ~~the maker or drawer to issue the instrument to him or his confed-~~
11 ~~erate in the name of the payee; or~~

12 ~~(b) a person signing as or on behalf of a maker or drawer~~
13 ~~intends the payee to have no interest in the instrument; or~~

14 ~~(c) an agent or employee of the maker or drawer has supplied~~
15 ~~him with the name of the payee intending the latter to have no~~
16 ~~such interest.~~

17 ~~(2) Nothing in this section shall affect the criminal or~~
18 ~~civil liability of the person so indorsing.~~ (1) AS USED IN THIS
19 SECTION:

20 (A) "EMPLOYEE" INCLUDES AN INDEPENDENT CONTRACTOR AND
21 EMPLOYEE OF AN INDEPENDENT CONTRACTOR RETAINED BY THE EMPLOYER.

22 (B) "FRAUDULENT ENDORSEMENT" MEANS (i) IN THE CASE OF AN
23 INSTRUMENT PAYABLE TO THE EMPLOYER, A FORGED ENDORSEMENT PURPORT-
24 ING TO BE THAT OF THE EMPLOYER, OR (ii) IN THE CASE OF AN INSTRU-
25 MENT WITH RESPECT TO WHICH THE EMPLOYER IS THE ISSUER, A FORGED
26 ENDORSEMENT PURPORTING TO BE THAT OF THE PERSON IDENTIFIED AS
27 PAYEE.

1 (C) "RESPONSIBILITY" WITH RESPECT TO INSTRUMENTS MEANS
2 AUTHORITY (i) TO SIGN OR ENDORSE INSTRUMENTS ON BEHALF OF THE
3 EMPLOYER, (ii) TO PROCESS INSTRUMENTS RECEIVED BY THE EMPLOYER
4 FOR BOOKKEEPING PURPOSES, FOR DEPOSIT TO AN ACCOUNT, OR FOR OTHER
5 DISPOSITION, (iii) TO PREPARE OR PROCESS INSTRUMENTS FOR ISSUE IN
6 THE NAME OF THE EMPLOYER, (iv) TO SUPPLY INFORMATION DETERMINING
7 THE NAMES OR ADDRESSES OF PAYEES OF INSTRUMENTS TO BE ISSUED IN
8 THE NAME OF THE EMPLOYER, (v) TO CONTROL THE DISPOSITION OF
9 INSTRUMENTS TO BE ISSUED IN THE NAME OF THE EMPLOYER, OR (vi) TO
10 ACT OTHERWISE WITH RESPECT TO INSTRUMENTS IN A RESPONSIBLE
11 CAPACITY. "RESPONSIBILITY" DOES NOT INCLUDE AUTHORITY THAT
12 MERELY ALLOWS AN EMPLOYEE TO HAVE ACCESS TO INSTRUMENTS OR BLANK
13 OR INCOMPLETE INSTRUMENT FORMS THAT ARE BEING STORED OR TRANS-
14 PORTED OR ARE PART OF INCOMING OR OUTGOING MAIL, OR SIMILAR
15 ACCESS.

16 (2) FOR THE PURPOSE OF DETERMINING THE RIGHTS AND LIABILI-
17 TIES OF A PERSON WHO, IN GOOD FAITH, PAYS AN INSTRUMENT OR TAKES
18 IT FOR VALUE OR FOR COLLECTION, IF AN EMPLOYER ENTRUSTED AN
19 EMPLOYEE WITH RESPONSIBILITY WITH RESPECT TO THE INSTRUMENT AND
20 THE EMPLOYEE OR A PERSON ACTING IN CONCERT WITH THE EMPLOYEE
21 MAKES A FRAUDULENT ENDORSEMENT OF THE INSTRUMENT, THE ENDORSEMENT
22 IS EFFECTIVE AS THE ENDORSEMENT OF THE PERSON TO WHOM THE INSTRU-
23 MENT IS PAYABLE IF IT IS MADE IN THE NAME OF THAT PERSON. IF THE
24 PERSON PAYING THE INSTRUMENT OR TAKING IT FOR VALUE OR FOR COL-
25 LECTION FAILS TO EXERCISE ORDINARY CARE IN PAYING OR TAKING THE
26 INSTRUMENT AND THAT FAILURE SUBSTANTIALLY CONTRIBUTES TO LOSS
27 RESULTING FROM THE FRAUD, THE PERSON BEARING THE LOSS MAY RECOVER

1 FROM THE PERSON FAILING TO EXERCISE ORDINARY CARE TO THE EXTENT
2 THE FAILURE TO EXERCISE ORDINARY CARE CONTRIBUTED TO THE LOSS.

3 (3) UNDER SUBSECTION (2), AN ENDORSEMENT IS MADE IN THE NAME
4 OF THE PERSON TO WHOM AN INSTRUMENT IS PAYABLE IF (i) IT IS MADE
5 IN A NAME SUBSTANTIALLY SIMILAR TO THE NAME OF THAT PERSON OR
6 (ii) THE INSTRUMENT, WHETHER OR NOT ENDORSED, IS DEPOSITED IN A
7 DEPOSITARY BANK TO AN ACCOUNT IN A NAME SUBSTANTIALLY SIMILAR TO
8 THE NAME OF THAT PERSON.

9 Sec. 3406. ~~Any person who by his negligence substantially~~
10 ~~contributes to a material alteration of the instrument or to the~~
11 ~~making of an unauthorized signature is precluded from asserting~~
12 ~~the alteration or lack of authority against a holder in due~~
13 ~~course or against a drawee or other payor who pays the instrument~~
14 ~~in good faith and in accordance with the reasonable commercial~~
15 ~~standards of the drawee's or payor's business.~~ (1) A PERSON
16 WHOSE FAILURE TO EXERCISE ORDINARY CARE SUBSTANTIALLY CONTRIBUTES
17 TO AN ALTERATION OF AN INSTRUMENT OR TO THE MAKING OF A FORGED
18 SIGNATURE ON AN INSTRUMENT IS PRECLUDED FROM ASSERTING THE ALTER-
19 ATION OR THE FORGERY AGAINST A PERSON WHO, IN GOOD FAITH, PAYS
20 THE INSTRUMENT OR TAKES IT FOR VALUE OR FOR COLLECTION.

21 (2) UNDER SUBSECTION (1), IF THE PERSON ASSERTING THE PRE-
22 CLUSION FAILS TO EXERCISE ORDINARY CARE IN PAYING OR TAKING THE
23 INSTRUMENT AND THAT FAILURE SUBSTANTIALLY CONTRIBUTES TO LOSS,
24 THE LOSS IS ALLOCATED BETWEEN THE PERSON PRECLUDED AND THE PERSON
25 ASSERTING THE PRECLUSION ACCORDING TO THE EXTENT TO WHICH THE
26 FAILURE OF EACH TO EXERCISE ORDINARY CARE CONTRIBUTED TO THE
27 LOSS.

1 (3) UNDER SUBSECTION (1), THE BURDEN OF PROVING FAILURE TO
2 EXERCISE ORDINARY CARE IS ON THE PERSON ASSERTING THE
3 PRECLUSION. UNDER SUBSECTION (2), THE BURDEN OF PROVING FAILURE
4 TO EXERCISE ORDINARY CARE IS ON THE PERSON PRECLUDED.

5 Sec. 3407. ~~(1) Any alteration of an instrument is material~~
6 ~~which changes the contract of any party thereto in any respect,~~
7 ~~including any such change in~~

8 ~~(a) the number or relations of the parties; or~~

9 ~~(b) an incomplete instrument, by completing it otherwise~~
10 ~~than as authorized; or~~

11 ~~(c) the writing as signed, by adding to it or by removing~~
12 ~~any part of it.~~

13 ~~(2) As against any person other than a subsequent holder in~~
14 ~~due course~~

15 ~~(a) alteration by the holder which is both fraudulent and~~
16 ~~material discharges any party whose contract is thereby changed~~
17 ~~unless that party assents or is precluded from asserting the~~
18 ~~defense;~~

19 ~~(b) no other alteration discharges any party and the instru-~~
20 ~~ment may be enforced according to its original tenor, or as to~~
21 ~~incomplete instruments according to the authority given.~~

22 ~~(3) A subsequent holder in due course may in all cases~~
23 ~~enforce the instrument according to its original tenor, and when~~
24 ~~an incomplete instrument has been completed, he may enforce it as~~
25 ~~completed. (1) "ALTERATION" MEANS (i) AN UNAUTHORIZED CHANGE IN~~
26 ~~AN INSTRUMENT THAT PURPORTS TO MODIFY IN ANY RESPECT THE~~
27 ~~OBLIGATION OF A PARTY, OR (ii) AN UNAUTHORIZED ADDITION OF WORDS~~

1 OR NUMBERS OR OTHER CHANGE TO AN INCOMPLETE INSTRUMENT RELATING
2 TO THE OBLIGATION OF A PARTY.

3 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), AN ALTERATION
4 FRAUDULENTLY MADE DISCHARGES A PARTY WHOSE OBLIGATION IS AFFECTED
5 BY THE ALTERATION UNLESS THAT PARTY ASSENTS OR IS PRECLUDED FROM
6 ASSERTING THE ALTERATION. NO OTHER ALTERATION DISCHARGES A
7 PARTY, AND THE INSTRUMENT MAY BE ENFORCED ACCORDING TO ITS ORIGI-
8 NAL TERMS.

9 (3) A PAYOR BANK OR DRAWEE PAYING A FRAUDULENTLY ALTERED
10 INSTRUMENT OR A PERSON TAKING IT FOR VALUE, IN GOOD FAITH AND
11 WITHOUT NOTICE OF THE ALTERATION, MAY ENFORCE RIGHTS WITH RESPECT
12 TO THE INSTRUMENT (i) ACCORDING TO ITS ORIGINAL TERMS, OR (ii) IN
13 THE CASE OF AN INCOMPLETE INSTRUMENT ALTERED BY UNAUTHORIZED COM-
14 PLETION, ACCORDING TO ITS TERMS AS COMPLETED.

15 Sec. 3408. ~~Want or failure of consideration is a defense~~
16 ~~as against any person not having the rights of a holder in due~~
17 ~~course (section 3305), except that no consideration is necessary~~
18 ~~for an instrument or obligation thereon given in payment of or as~~
19 ~~security for an antecedent obligation of any kind. Nothing in~~
20 ~~this section shall be taken to displace any statute outside this~~
21 ~~act under which a promise is enforceable notwithstanding lack or~~
22 ~~failure of consideration. Partial failure of consideration is a~~
23 ~~defense pro tanto whether or not the failure is in an ascertained~~
24 ~~or liquidated amount.~~ A CHECK OR OTHER DRAFT DOES NOT OF ITSELF
25 OPERATE AS AN ASSIGNMENT OF FUNDS IN THE HANDS OF THE DRAWEE
26 AVAILABLE FOR ITS PAYMENT, AND THE DRAWEE IS NOT LIABLE ON THE
27 INSTRUMENT UNTIL THE DRAWEE ACCEPTS IT.

1 Sec. 3409. ~~(1) A check or other draft does not of itself~~
2 ~~operate as an assignment of any funds in the hands of the drawee~~
3 ~~available for its payment, and the drawee is not liable on the~~
4 ~~instrument until he accepts it.~~

5 ~~(2) Nothing in this section shall affect any liability in~~
6 ~~contract, tort or otherwise arising from any letter of credit or~~
7 ~~other obligation or representation which is not an acceptance.~~

8 (1) "ACCEPTANCE" MEANS THE DRAWEE'S SIGNED AGREEMENT TO PAY A
9 DRAFT AS PRESENTED. IT MUST BE WRITTEN ON THE DRAFT AND MAY CON-
10 SIST OF THE DRAWEE'S SIGNATURE ALONE. ACCEPTANCE MAY BE MADE AT
11 ANY TIME AND BECOMES EFFECTIVE WHEN NOTIFICATION PURSUANT TO
12 INSTRUCTIONS IS GIVEN OR THE ACCEPTED DRAFT IS DELIVERED FOR THE
13 PURPOSE OF GIVING RIGHTS ON THE ACCEPTANCE TO ANY PERSON.

14 (2) A DRAFT MAY BE ACCEPTED ALTHOUGH IT HAS NOT BEEN SIGNED
15 BY THE DRAWER, IS OTHERWISE INCOMPLETE, IS OVERDUE, OR HAS BEEN
16 DISHONORED.

17 (3) IF A DRAFT IS PAYABLE AT A FIXED PERIOD AFTER SIGHT AND
18 THE ACCEPTOR FAILS TO DATE THE ACCEPTANCE, THE HOLDER MAY COM-
19 PLETE THE ACCEPTANCE BY SUPPLYING A DATE IN GOOD FAITH.

20 (4) "CERTIFIED CHECK" MEANS A CHECK ACCEPTED BY THE BANK ON
21 WHICH IT IS DRAWN. ACCEPTANCE MAY BE MADE AS STATED IN SUBSEC-
22 TION (1) OR BY A WRITING ON THE CHECK WHICH INDICATES THAT THE
23 CHECK IS CERTIFIED. THE DRAWEE OF A CHECK HAS NO OBLIGATION TO
24 CERTIFY THE CHECK, AND REFUSAL TO CERTIFY IS NOT DISHONOR OF THE
25 CHECK.

26 Sec. 3410. ~~(1) Acceptance is the drawee's signed~~
27 ~~engagement to honor the draft as presented. It must be written~~

1 ~~on the draft, and may consist of his signature alone. It becomes~~
2 ~~operative when completed by delivery or notification.~~

3 ~~(2) A draft may be accepted although it has not been signed~~
4 ~~by the drawer or is otherwise incomplete or is overdue or has~~
5 ~~been dishonored.~~

6 ~~(3) Where the draft is payable at a fixed period after sight~~
7 ~~and the acceptor fails to date his acceptance the holder may com-~~
8 ~~plete it by supplying a date in good faith. (1) IF THE TERMS OF~~
9 ~~A DRAWEES ACCEPTANCE VARY FROM THE TERMS OF THE DRAFT AS~~
10 ~~PRESENTED, THE HOLDER MAY REFUSE THE ACCEPTANCE AND TREAT THE~~
11 ~~DRAFT AS DISHONORED. IN THAT CASE, THE DRAWEES MAY CANCEL THE~~
12 ~~ACCEPTANCE.~~

13 (2) THE TERMS OF A DRAFT ARE NOT VARIED BY AN ACCEPTANCE TO
14 PAY AT A PARTICULAR BANK OR PLACE IN THE UNITED STATES, UNLESS
15 THE ACCEPTANCE STATES THAT THE DRAFT IS TO BE PAID ONLY AT THAT
16 BANK OR PLACE.

17 (3) IF THE HOLDER ASSENTS TO AN ACCEPTANCE VARYING THE TERMS
18 OF A DRAFT, THE OBLIGATION OF EACH DRAWER AND ENDORSER THAT DOES
19 NOT EXPRESSLY ASSENT TO THE ACCEPTANCE IS DISCHARGED.

20 Sec. 3411. ~~(1) Certification of a check is acceptance.~~
21 ~~Where a holder procures certification the drawer and all prior~~
22 ~~indorsers are discharged.~~

23 ~~(2) Unless otherwise agreed a bank has no obligation to cer-~~
24 ~~tify a check.~~

25 ~~(3) A bank may certify a check before returning it for lack~~
26 ~~of proper indorsement. If it does so the drawer is discharged.~~

27 (1) AS USED IN THIS SECTION, "OBLIGATED BANK" MEANS THE ACCEPTOR

1 OF A CERTIFIED CHECK OR THE ISSUER OF A CASHIER'S CHECK OR
2 TELLER'S CHECK BOUGHT FROM THE ISSUER.

3 (2) IF THE OBLIGATED BANK WRONGFULLY (i) REFUSES TO PAY A
4 CASHIER'S CHECK OR CERTIFIED CHECK, (ii) STOPS PAYMENT OF A
5 TELLER'S CHECK, OR (iii) REFUSES TO PAY A DISHONORED TELLER'S
6 CHECK, THE PERSON ASSERTING THE RIGHT TO ENFORCE THE CHECK IS
7 ENTITLED TO COMPENSATION FOR EXPENSES AND LOSS OF INTEREST
8 RESULTING FROM THE NONPAYMENT AND MAY RECOVER CONSEQUENTIAL DAM-
9 AGES IF THE OBLIGATED BANK REFUSES TO PAY AFTER RECEIVING NOTICE
10 OF PARTICULAR CIRCUMSTANCES GIVING RISE TO THE DAMAGES.

11 (3) EXPENSES OR CONSEQUENTIAL DAMAGES UNDER SUBSECTION (2)
12 ARE NOT RECOVERABLE IF THE REFUSAL OF THE OBLIGATED BANK TO PAY
13 OCCURS BECAUSE (i) THE BANK SUSPENDS PAYMENTS, (ii) THE OBLIGATED
14 BANK ASSERTS A CLAIM OR DEFENSE OF THE BANK THAT IT HAS REASON-
15 ABLE GROUNDS TO BELIEVE IS AVAILABLE AGAINST THE PERSON ENTITLED
16 TO ENFORCE THE INSTRUMENT, (iii) THE OBLIGATED BANK HAS A REASON-
17 ABLE DOUBT WHETHER THE PERSON DEMANDING PAYMENT IS THE PERSON
18 ENTITLED TO ENFORCE THE INSTRUMENT, OR (iv) PAYMENT IS PROHIBITED
19 BY LAW.

20 Sec. 3412. ~~(1) Where the drawee's proffered acceptance in~~
21 ~~any manner varies the draft as presented the holder may refuse~~
22 ~~the acceptance and treat the draft as dishonored in which case~~
23 ~~the drawee is entitled to have his acceptance cancelled.~~

24 ~~(2) The terms of the draft are not varied by an acceptance~~
25 ~~to pay at any particular bank or place in the United States,~~
26 ~~unless the acceptance states that the draft is to be paid only at~~
27 ~~such bank or place.~~

1 ~~(3) Where the holder assents to an acceptance varying the~~
2 ~~terms of the draft each drawer and indorser who does not affirma-~~
3 ~~tively assent is discharged.~~ THE ISSUER OF A NOTE OR CASHIER'S
4 CHECK OR OTHER DRAFT DRAWN ON THE DRAWER IS OBLIGED TO PAY THE
5 INSTRUMENT (i) ACCORDING TO ITS TERMS AT THE TIME IT WAS ISSUED
6 OR, IF NOT ISSUED, AT THE TIME IT FIRST CAME INTO POSSESSION OF A
7 HOLDER, OR (ii) IF THE ISSUER SIGNED AN INCOMPLETE INSTRUMENT,
8 ACCORDING TO ITS TERMS WHEN COMPLETED, TO THE EXTENT STATED IN
9 SECTIONS 3115 AND 3407. THE OBLIGATION IS OWED TO A PERSON ENTI-
10 TLED TO ENFORCE THE INSTRUMENT OR TO AN ENDORSER WHO PAID THE
11 INSTRUMENT UNDER SECTION 3415.

12 Sec. 3413. ~~(1) The maker or acceptor engages that he will~~
13 ~~pay the instrument according to its tenor at the time of his~~
14 ~~engagement or as completed pursuant to section 3115 on incomplete~~
15 ~~instruments.~~

16 ~~(2) The drawer engages that upon dishonor of the draft and~~
17 ~~any necessary notice of dishonor or protest he will pay the~~
18 ~~amount of the draft to the holder or to any indorser who takes it~~
19 ~~up. The drawer may disclaim this liability by drawing without~~
20 ~~recourse.~~

21 ~~(3) By making, drawing or accepting the party admits as~~
22 ~~against all subsequent parties including the drawee the existence~~
23 ~~of the payee and his then capacity to indorse.~~

24 (1) THE ACCEPTOR OF A DRAFT IS OBLIGED TO PAY THE DRAFT (i)
25 ACCORDING TO ITS TERMS AT THE TIME IT WAS ACCEPTED, EVEN THOUGH
26 THE ACCEPTANCE STATES THAT THE DRAFT IS PAYABLE "AS ORIGINALLY
27 DRAWN" OR EQUIVALENT TERMS, (ii) IF THE ACCEPTANCE VARIES THE

1 TERMS OF THE DRAFT, ACCORDING TO THE TERMS OF THE DRAFT AS
2 VARIED, OR (iii) IF THE ACCEPTANCE IS OF A DRAFT THAT IS AN
3 INCOMPLETE INSTRUMENT, ACCORDING TO ITS TERMS WHEN COMPLETED, TO
4 THE EXTENT STATED IN SECTIONS 3115 AND 3407. THE OBLIGATION IS
5 OWED TO A PERSON ENTITLED TO ENFORCE THE DRAFT OR TO THE DRAWER
6 OR AN ENDORSER WHO PAID THE DRAFT UNDER SECTION 3414 OR 3415.

7 (2) IF THE CERTIFICATION OF A CHECK OR OTHER ACCEPTANCE OF A
8 DRAFT STATES THE AMOUNT CERTIFIED OR ACCEPTED, THE OBLIGATION OF
9 THE ACCEPTOR IS THAT AMOUNT. IF (i) THE CERTIFICATION OR ACCEP-
10 TANCE DOES NOT STATE AN AMOUNT, (ii) THE AMOUNT OF THE INSTRUMENT
11 IS SUBSEQUENTLY RAISED, AND (iii) THE INSTRUMENT IS THEN NEGOTI-
12 ATED TO A HOLDER IN DUE COURSE, THE OBLIGATION OF THE ACCEPTOR IS
13 THE AMOUNT OF THE INSTRUMENT AT THE TIME IT WAS TAKEN BY THE
14 HOLDER IN DUE COURSE.

15 Sec. 3414. ~~(1) Unless the indorsement otherwise specifies~~
16 ~~(as by such words as "without recourse") every indorser engages~~
17 ~~that upon dishonor and any necessary notice of dishonor and pro-~~
18 ~~test he will pay the instrument according to its tenor at the~~
19 ~~time of his indorsement to the holder or to any subsequent~~
20 ~~indorser who takes it up, even though the indorser who takes it~~
21 ~~up was not obligated to do so.~~

22 ~~(2) Unless they otherwise agree indorsers are liable to one~~
23 ~~another in the order in which they indorse, which is presumed to~~
24 ~~be the order in which their signatures appear on the instrument.~~

25 (1) THIS SECTION DOES NOT APPLY TO CASHIER'S CHECKS OR OTHER
26 DRAFTS DRAWN ON THE DRAWER.

1 (2) IF AN UNACCEPTED DRAFT IS DISHONORED, THE DRAWER IS
2 OBLIGED TO PAY THE DRAFT (i) ACCORDING TO ITS TERMS AT THE TIME
3 IT WAS ISSUED OR, IF NOT ISSUED, AT THE TIME IT FIRST CAME INTO
4 POSSESSION OF A HOLDER, OR (ii) IF THE DRAWER SIGNED AN INCOM-
5 PLETE INSTRUMENT, ACCORDING TO ITS TERMS WHEN COMPLETED, TO THE
6 EXTENT STATED IN SECTIONS 3115 AND 3407. THE OBLIGATION IS OWED
7 TO A PERSON ENTITLED TO ENFORCE THE DRAFT OR TO AN ENDORSER WHO
8 PAID THE DRAFT UNDER SECTION 3415.

9 (3) IF A DRAFT IS ACCEPTED BY A BANK, THE DRAWER IS DIS-
10 CHARGED, REGARDLESS OF WHEN OR BY WHOM ACCEPTANCE WAS OBTAINED.

11 (4) IF A DRAFT IS ACCEPTED AND THE ACCEPTOR IS NOT A BANK,
12 THE OBLIGATION OF THE DRAWER TO PAY THE DRAFT IF THE DRAFT IS
13 DISHONORED BY THE ACCEPTOR IS THE SAME AS THE OBLIGATION OF AN
14 ENDORSER UNDER SECTION 3415(1) AND (3).

15 (5) IF A DRAFT STATES THAT IT IS DRAWN "WITHOUT RECOURSE" OR
16 OTHERWISE DISCLAIMS LIABILITY OF THE DRAWER TO PAY THE DRAFT, THE
17 DRAWER IS NOT LIABLE UNDER SUBSECTION (2) TO PAY THE DRAFT IF THE
18 DRAFT IS NOT A CHECK. A DISCLAIMER OF THE LIABILITY STATED IN
19 SUBSECTION (2) IS NOT EFFECTIVE IF THE DRAFT IS A CHECK.

20 (6) IF (i) A CHECK IS NOT PRESENTED FOR PAYMENT OR GIVEN TO
21 A DEPOSITARY BANK FOR COLLECTION WITHIN 30 DAYS AFTER ITS DATE,
22 (ii) THE DRAWEE SUSPENDS PAYMENTS AFTER EXPIRATION OF THE 30-DAY
23 PERIOD WITHOUT PAYING THE CHECK, AND (iii) BECAUSE OF THE SUSPEN-
24 SION OF PAYMENTS, THE DRAWER IS DEPRIVED OF FUNDS MAINTAINED WITH
25 THE DRAWEE TO COVER PAYMENT OF THE CHECK, THE DRAWER TO THE
26 EXTENT DEPRIVED OF FUNDS MAY DISCHARGE ITS OBLIGATION TO PAY THE
27 CHECK BY ASSIGNING TO THE PERSON ENTITLED TO ENFORCE THE CHECK

1 THE RIGHTS OF THE DRAWER AGAINST THE DRAWEE WITH RESPECT TO THE
2 FUNDS.

3 Sec. 3415. ~~(1) An accommodation party is one who signs the~~
4 ~~instrument in any capacity for the purpose of lending his name to~~
5 ~~another party to it.~~

6 ~~(2) When the instrument has been taken for value before it~~
7 ~~is due the accommodation party is liable in the capacity in which~~
8 ~~he has signed even though the taker knows of the accommodation.~~

9 ~~(3) As against a holder in due course and without notice of~~
10 ~~the accommodation oral proof of the accommodation is not admissi-~~
11 ~~ble to give the accommodation party the benefit of discharges~~
12 ~~dependent on his character as such. In other cases the accommo-~~
13 ~~dation character may be shown by oral proof.~~

14 ~~(4) An indorsement which shows that it is not in the chain~~
15 ~~of title is notice of its accommodation character.~~

16 ~~(5) An accommodation party is not liable to the party accom-~~
17 ~~modated, and if he pays the instrument has a right of recourse on~~
18 ~~the instrument against such party.~~

19 (1) SUBJECT TO SUBSECTIONS (2), (3), AND (4) AND TO SECTION
20 3419(4), IF AN INSTRUMENT IS DISHONORED, AN ENDORSER IS OBLIGED
21 TO PAY THE AMOUNT DUE ON THE INSTRUMENT (i) ACCORDING TO THE
22 TERMS OF THE INSTRUMENT AT THE TIME IT WAS ENDORSED, OR (ii) IF
23 THE ENDORSER ENDORSED AN INCOMPLETE INSTRUMENT, ACCORDING TO ITS
24 TERMS WHEN COMPLETED, TO THE EXTENT STATED IN SECTIONS 3115 AND
25 3407. THE OBLIGATION OF THE ENDORSER IS OWED TO A PERSON ENTI-
26 TLED TO ENFORCE THE INSTRUMENT OR TO A SUBSEQUENT ENDORSER WHO
27 PAID THE INSTRUMENT UNDER THIS SECTION.

1 (2) IF AN ENDORSEMENT STATES THAT IT IS MADE "WITHOUT
2 RECOURSE" OR OTHERWISE DISCLAIMS LIABILITY OF THE ENDORSER, THE
3 ENDORSER IS NOT LIABLE UNDER SUBSECTION (1) TO PAY THE
4 INSTRUMENT.

5 (3) IF NOTICE OF DISHONOR OF AN INSTRUMENT IS REQUIRED BY
6 SECTION 3503 AND NOTICE OF DISHONOR COMPLYING WITH THAT SECTION
7 IS NOT GIVEN TO AN ENDORSER, THE LIABILITY OF THE ENDORSER UNDER
8 SUBSECTION (1) IS DISCHARGED.

9 (4) IF A DRAFT IS ACCEPTED BY A BANK AFTER AN ENDORSEMENT IS
10 MADE, THE LIABILITY OF THE ENDORSER UNDER SUBSECTION (1) IS
11 DISCHARGED.

12 (5) IF AN ENDORSER OF A CHECK IS LIABLE UNDER SUBSECTION (1)
13 AND THE CHECK IS NOT PRESENTED FOR PAYMENT, OR GIVEN TO A DEPOSI-
14 TORY BANK FOR COLLECTION, WITHIN 30 DAYS AFTER THE DAY THE
15 ENDORSEMENT WAS MADE, THE LIABILITY OF THE ENDORSER UNDER SUBSEC-
16 TION (1) IS DISCHARGED.

17 Sec. 3416. ~~(1) "Payment guaranteed" or equivalent words~~
18 ~~added to a signature mean that the signer engages that if the~~
19 ~~instrument is not paid when due he will pay it according to its~~
20 ~~tenor without resort by the holder to any other party.~~

21 ~~(2) "Collection guaranteed" or equivalent words added to a~~
22 ~~signature mean that the signer engages that if the instrument is~~
23 ~~not paid when due he will pay it according to its tenor, but only~~
24 ~~after the holder has reduced his claim against the maker or~~
25 ~~acceptor to judgment and execution has been returned unsatisfied,~~
26 ~~or after the maker or acceptor has become insolvent or it is~~
27 ~~otherwise apparent that it is useless to proceed against him.~~

1 ~~(3) Words of guaranty which do not otherwise specify~~
2 ~~guarantee payment.~~

3 ~~(4) No words of guaranty added to the signature of a sole~~
4 ~~maker or acceptor affect his liability on the instrument. Such~~
5 ~~words added to the signature of one of two or more makers or~~
6 ~~acceptors create a presumption that the signature is for the~~
7 ~~accommodation of the others.~~

8 ~~(5) When words of guaranty are used presentment, notice of~~
9 ~~dishonor and protest are not necessary to charge the user.~~

10 ~~(6) Any guaranty written on the instrument is enforceable~~
11 ~~notwithstanding any statute of frauds.~~

12 (1) A PERSON WHO TRANSFERS AN INSTRUMENT FOR CONSIDERATION
13 WARRANTS TO THE TRANSFEREE AND, IF THE TRANSFER IS BY ENDORSE-
14 MENT, TO ANY SUBSEQUENT TRANSFEREE ALL OF THE FOLLOWING:

15 (A) THAT THE WARRANTOR IS A PERSON ENTITLED TO ENFORCE THE
16 INSTRUMENT.

17 (B) THAT ALL SIGNATURES ON THE INSTRUMENT ARE AUTHENTIC AND
18 AUTHORIZED.

19 (C) THAT THE INSTRUMENT HAS NOT BEEN ALTERED.

20 (D) THAT THE INSTRUMENT IS NOT SUBJECT TO A DEFENSE OR CLAIM
21 IN RECOUPMENT OF ANY PARTY WHICH CAN BE ASSERTED AGAINST THE
22 WARRANTOR.

23 (E) THAT THE WARRANTOR HAS NO KNOWLEDGE OF ANY INSOLVENCY
24 PROCEEDING COMMENCED WITH RESPECT TO THE MAKER OR ACCEPTOR OR, IN
25 THE CASE OF AN UNACCEPTED DRAFT, THE DRAWER.

26 (2) A PERSON TO WHOM THE WARRANTIES UNDER SUBSECTION (1) ARE
27 MADE AND WHO TOOK THE INSTRUMENT IN GOOD FAITH MAY RECOVER FROM

1 THE WARRANTOR AS DAMAGES FOR BREACH OF WARRANTY AN AMOUNT EQUAL
2 TO THE LOSS SUFFERED AS A RESULT OF THE BREACH, BUT NOT MORE THAN
3 THE AMOUNT OF THE INSTRUMENT PLUS EXPENSES AND LOSS OF INTEREST
4 INCURRED AS A RESULT OF THE BREACH.

5 (3) THE WARRANTIES STATED IN SUBSECTION (1) CANNOT BE DIS-
6 CLAIMED WITH RESPECT TO CHECKS. UNLESS NOTICE OF A CLAIM FOR
7 BREACH OF WARRANTY IS GIVEN TO THE WARRANTOR WITHIN 30 DAYS AFTER
8 THE CLAIMANT HAS REASON TO KNOW OF THE BREACH AND THE IDENTITY OF
9 THE WARRANTOR, THE LIABILITY OF THE WARRANTOR UNDER SUBSECTION
10 (2) IS DISCHARGED TO THE EXTENT OF ANY LOSS CAUSED BY THE DELAY
11 IN GIVING NOTICE OF THE CLAIM.

12 (4) A CAUSE OF ACTION FOR BREACH OF WARRANTY UNDER THIS SEC-
13 TION ACCRUES WHEN THE CLAIMANT HAS REASON TO KNOW OF THE BREACH.

14 Sec. 3417. ~~(1) Any person who obtains payment or accep-~~
15 ~~tance and any prior transferor warrants to a person who in good~~
16 ~~faith pays or accepts that~~

17 ~~(a) he has a good title to the instrument or is authorized~~
18 ~~to obtain payment or acceptance on behalf of one who has a good~~
19 ~~title; and~~

20 ~~(b) he has no knowledge that the signature of the maker or~~
21 ~~drawer is unauthorized, except that this warranty is not given by~~
22 ~~a holder in due course acting in good faith~~

23 ~~(i) to a maker with respect to the maker's own signature; or~~

24 ~~(ii) to a drawer with respect to the drawer's own signature,~~
25 ~~whether or not the drawer is also the drawee; or~~

26 ~~(iii) to an acceptor of a draft if the holder in due course~~
27 ~~took the draft after the acceptance or obtained the acceptance~~

1 ~~without knowledge that the drawer's signature was unauthorized;~~
2 ~~and~~

3 ~~(c) the instrument has not been materially altered, except~~
4 ~~that this warranty is not given by a holder in due course acting~~
5 ~~in good faith~~

6 ~~(i) to the maker of a note; or~~

7 ~~(ii) to the drawer of a draft whether or not the drawer is~~
8 ~~also the drawee; or~~

9 ~~(iii) to the acceptor of a draft with respect to an alter-~~
10 ~~ation made prior to the acceptance if the holder in due course~~
11 ~~took the draft after the acceptance, even though the acceptance~~
12 ~~provided "payable as originally drawn" or equivalent terms; or~~

13 ~~(iv) to the acceptor of a draft with respect to an alter-~~
14 ~~ation made after the acceptance.~~

15 ~~(2) Any person who transfers an instrument and receives con-~~
16 ~~sideration warrants to his transferee and if the transfer is by~~
17 ~~indorsement to any subsequent holder who takes the instrument in~~
18 ~~good faith that~~

19 ~~(a) he has a good title to the instrument or is authorized~~
20 ~~to obtain payment or acceptance on behalf of one who has a good~~
21 ~~title and the transfer is otherwise rightful; and~~

22 ~~(b) all signatures are genuine or authorized; and~~

23 ~~(c) the instrument has not been materially altered; and~~

24 ~~(d) no defense of any party is good against him; and~~

25 ~~(e) he has no knowledge of any insolvency proceeding insti-~~
26 ~~tuted with respect to the maker or acceptor or the drawer of an~~
27 ~~unaccepted instrument.~~

1 ~~(3) By transferring "without recourse" the transferor limits~~
2 ~~the obligation stated in subsection (2)(d) to a warranty that he~~
3 ~~has no knowledge of such a defense.~~

4 ~~(4) A selling agent or broker who does not disclose the fact~~
5 ~~that he is acting only as such gives the warranties provided in~~
6 ~~this section, but if he makes such disclosure warrants only his~~
7 ~~good faith and authority.~~

8 (1) IF AN UNACCEPTED DRAFT IS PRESENTED TO THE DRAWEE FOR
9 PAYMENT OR ACCEPTANCE AND THE DRAWEE PAYS OR ACCEPTS THE DRAFT,
10 (i) THE PERSON OBTAINING PAYMENT OR ACCEPTANCE, AT THE TIME OF
11 PRESENTMENT, AND (ii) A PREVIOUS TRANSFEROR OF THE DRAFT, AT THE
12 TIME OF TRANSFER, WARRANT TO THE DRAWEE MAKING PAYMENT OR ACCEPT-
13 ING THE DRAFT IN GOOD FAITH ALL OF THE FOLLOWING:

14 (A) THAT THE WARRANTOR IS, OR WAS, AT THE TIME THE WARRANTOR
15 TRANSFERRED THE DRAFT, A PERSON ENTITLED TO ENFORCE THE DRAFT OR
16 AUTHORIZED TO OBTAIN PAYMENT OR ACCEPTANCE OF THE DRAFT ON BEHALF
17 OF A PERSON ENTITLED TO ENFORCE THE DRAFT.

18 (B) THAT THE DRAFT HAS NOT BEEN ALTERED.

19 (C) THAT THE WARRANTOR HAS NO KNOWLEDGE THAT THE SIGNATURE
20 OF THE DRAWER OF THE DRAFT IS UNAUTHORIZED.

21 (2) A DRAWEE MAKING PAYMENT MAY RECOVER FROM ANY WARRANTOR
22 DAMAGES FOR BREACH OF WARRANTY EQUAL TO THE AMOUNT PAID BY THE
23 DRAWEE LESS THE AMOUNT THE DRAWEE RECEIVED OR IS ENTITLED TO
24 RECEIVE FROM THE DRAWER BECAUSE OF THE PAYMENT. IN ADDITION, THE
25 DRAWEE IS ENTITLED TO COMPENSATION FOR EXPENSES AND LOSS OF
26 INTEREST RESULTING FROM THE BREACH. THE RIGHT OF THE DRAWEE TO
27 RECOVER DAMAGES UNDER THIS SUBSECTION IS NOT AFFECTED BY ANY

1 FAILURE OF THE DRAWEE TO EXERCISE ORDINARY CARE IN MAKING
2 PAYMENT. IF THE DRAWEE ACCEPTS THE DRAFT, BREACH OF WARRANTY IS
3 A DEFENSE TO THE OBLIGATION OF THE ACCEPTOR. IF THE ACCEPTOR
4 MAKES PAYMENT WITH RESPECT TO THE DRAFT, THE ACCEPTOR IS ENTITLED
5 TO RECOVER FROM ANY WARRANTOR FOR BREACH OF WARRANTY THE AMOUNTS
6 STATED IN THIS SUBSECTION.

7 (3) IF A DRAWEE ASSERTS A CLAIM FOR BREACH OF WARRANTY UNDER
8 SUBSECTION (1) BASED ON AN UNAUTHORIZED ENDORSEMENT OF THE DRAFT
9 OR AN ALTERATION OF THE DRAFT, THE WARRANTOR MAY DEFEND BY PROV-
10 ING THAT THE ENDORSEMENT IS EFFECTIVE UNDER SECTION 3404 OR 3405
11 OR THE DRAWER IS PRECLUDED UNDER SECTION 3406 OR 4406 FROM
12 ASSERTING AGAINST THE DRAWEE THE UNAUTHORIZED ENDORSEMENT OR
13 ALTERATION.

14 (4) IF (i) A DISHONORED DRAFT IS PRESENTED FOR PAYMENT TO
15 THE DRAWER OR AN ENDORSER OR (ii) ANY OTHER INSTRUMENT IS
16 PRESENTED FOR PAYMENT TO A PARTY OBLIGED TO PAY THE INSTRUMENT,
17 AND (iii) PAYMENT IS RECEIVED, THE FOLLOWING RULES APPLY:

18 (A) THE PERSON OBTAINING PAYMENT AND A PRIOR TRANSFEROR OF
19 THE INSTRUMENT WARRANT TO THE PERSON MAKING PAYMENT IN GOOD FAITH
20 THAT THE WARRANTOR IS, OR WAS, AT THE TIME THE WARRANTOR TRANS-
21 FERRED THE INSTRUMENT, A PERSON ENTITLED TO ENFORCE THE INSTRU-
22 MENT OR AUTHORIZED TO OBTAIN PAYMENT ON BEHALF OF A PERSON ENTI-
23 TLED TO ENFORCE THE INSTRUMENT.

24 (B) THE PERSON MAKING PAYMENT MAY RECOVER FROM ANY WARRANTOR
25 FOR BREACH OF WARRANTY AN AMOUNT EQUAL TO THE AMOUNT PAID PLUS
26 EXPENSES AND LOSS OF INTEREST RESULTING FROM THE BREACH.

1 (5) THE WARRANTIES STATED IN SUBSECTIONS (1) AND (4) CANNOT
2 BE DISCLAIMED WITH RESPECT TO CHECKS. UNLESS NOTICE OF A CLAIM
3 FOR BREACH OF WARRANTY IS GIVEN TO THE WARRANTOR WITHIN 30 DAYS
4 AFTER THE CLAIMANT HAS REASON TO KNOW OF THE BREACH AND THE IDEN-
5 TITY OF THE WARRANTOR, THE LIABILITY OF THE WARRANTOR UNDER SUB-
6 SECTION (2) OR (4) IS DISCHARGED TO THE EXTENT OF ANY LOSS CAUSED
7 BY THE DELAY IN GIVING NOTICE OF THE CLAIM.

8 (6) A CAUSE OF ACTION FOR BREACH OF WARRANTY UNDER THIS SEC-
9 TION ACCRUES WHEN THE CLAIMANT HAS REASON TO KNOW OF THE BREACH.

10 Sec. 3418. ~~Except for recovery of bank payments as pro-~~
11 ~~vided in the article on bank deposits and collections (article 4)~~
12 ~~and except for liability for breach of warranty on presentment~~
13 ~~under the preceding section, payment or acceptance of any instru-~~
14 ~~ment is final in favor of a holder in due course, or a person who~~
15 ~~has in good faith changed his position in reliance on the~~
16 ~~payment.~~

17 (1) EXCEPT AS PROVIDED IN SUBSECTION (3), IF THE DRAWEE OF A
18 DRAFT PAYS OR ACCEPTS THE DRAFT AND THE DRAWEE ACTED ON THE MIS-
19 TAKEN BELIEF THAT (i) PAYMENT OF THE DRAFT HAD NOT BEEN STOPPED
20 PURSUANT TO SECTION 4403 OR (ii) THE SIGNATURE OF THE DRAWER OF
21 THE DRAFT WAS AUTHORIZED, THE DRAWEE MAY RECOVER THE AMOUNT OF
22 THE DRAFT FROM THE PERSON TO WHOM OR FOR WHOSE BENEFIT PAYMENT
23 WAS MADE OR, IN THE CASE OF ACCEPTANCE, MAY REVOKE THE
24 ACCEPTANCE. RIGHTS OF THE DRAWEE UNDER THIS SUBSECTION ARE NOT
25 AFFECTED BY FAILURE OF THE DRAWEE TO EXERCISE ORDINARY CARE IN
26 PAYING OR ACCEPTING THE DRAFT.

1 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), IF AN INSTRUMENT
 2 HAS BEEN PAID OR ACCEPTED BY MISTAKE AND THE CASE IS NOT COVERED
 3 BY SUBSECTION (1), THE PERSON PAYING OR ACCEPTING MAY, TO THE
 4 EXTENT PERMITTED BY THE LAW GOVERNING MISTAKE AND RESTITUTION,
 5 (i) RECOVER THE PAYMENT FROM THE PERSON TO WHOM OR FOR WHOSE BEN-
 6 EFIT PAYMENT WAS MADE OR (ii) IN THE CASE OF ACCEPTANCE, MAY
 7 REVOKE THE ACCEPTANCE.

8 (3) THE REMEDIES PROVIDED BY SUBSECTION (1) OR (2) MAY NOT
 9 BE ASSERTED AGAINST A PERSON WHO TOOK THE INSTRUMENT IN GOOD
 10 FAITH AND FOR VALUE OR WHO IN GOOD FAITH CHANGED POSITION IN
 11 RELIANCE ON THE PAYMENT OR ACCEPTANCE. THIS SUBSECTION DOES NOT
 12 LIMIT REMEDIES PROVIDED BY SECTION 3417 OR 4407.

13 (4) NOTWITHSTANDING SECTION 4215, IF AN INSTRUMENT IS PAID
 14 OR ACCEPTED BY MISTAKE AND THE PAYOR OR ACCEPTOR RECOVERS PAYMENT
 15 OR REVOKES ACCEPTANCE UNDER SUBSECTION (1) OR (2), THE INSTRUMENT
 16 IS DEEMED NOT TO HAVE BEEN PAID OR ACCEPTED AND IS TREATED AS
 17 DISHONORED, AND THE PERSON FROM WHOM PAYMENT IS RECOVERED HAS
 18 RIGHTS AS A PERSON ENTITLED TO ENFORCE THE DISHONORED INSTRUMENT.

19 Sec. 3419. ~~(1) An instrument is converted when~~

20 ~~(a) a drawee to whom it is delivered for acceptance refuses~~
 21 ~~to return it on demand; or~~

22 ~~(b) any person to whom it is delivered for payment refuses~~
 23 ~~on demand either to pay or to return it; or~~

24 ~~(c) it is paid on a forged indorsement.~~

25 ~~(2) In an action against a drawee under subsection (1) the~~
 26 ~~measure of the drawee's liability is the face amount of the~~
 27 ~~instrument. In any other action under subsection (1) the measure~~

1 ~~of liability is presumed to be the face amount of the~~
2 ~~instrument.~~

3 ~~(3) Subject to the provisions of this act concerning~~
4 ~~restrictive indorsements a representative, including a depository~~
5 ~~or collecting bank, who has in good faith and in accordance with~~
6 ~~the reasonable commercial standards applicable to the business of~~
7 ~~such representative dealt with an instrument or its proceeds on~~
8 ~~behalf of one who was not the true owner is not liable in conver-~~
9 ~~sion or otherwise to the true owner beyond the amount of any pro-~~
10 ~~ceeds remaining in his hands.~~

11 ~~(4) An intermediary bank or payor bank which is not a depos-~~
12 ~~itary bank is not liable in conversion solely by reason of the~~
13 ~~fact that proceeds of an item indorsed restrictively (sections~~
14 ~~3205 and 3206) are not paid or applied consistently with the~~
15 ~~restrictive indorsement of an indorser other than its immediate~~
16 ~~transferor.~~

17 (1) IF AN INSTRUMENT IS ISSUED FOR VALUE GIVEN FOR THE BENE-
18 FIT OF A PARTY TO THE INSTRUMENT ("ACCOMMODATED PARTY") AND
19 ANOTHER PARTY TO THE INSTRUMENT ("ACCOMMODATION PARTY") SIGNS THE
20 INSTRUMENT FOR THE PURPOSE OF INCURRING LIABILITY ON THE INSTRU-
21 MENT WITHOUT BEING A DIRECT BENEFICIARY OF THE VALUE GIVEN FOR
22 THE INSTRUMENT, THE INSTRUMENT IS SIGNED BY THE ACCOMMODATION
23 PARTY "FOR ACCOMMODATION".

24 (2) AN ACCOMMODATION PARTY MAY SIGN THE INSTRUMENT AS MAKER,
25 DRAWER, ACCEPTOR, OR ENDORSER AND, SUBJECT TO SUBSECTION (4), IS
26 OBLIGED TO PAY THE INSTRUMENT IN THE CAPACITY IN WHICH THE
27 ACCOMMODATION PARTY SIGNS. THE OBLIGATION OF AN ACCOMMODATION

1 PARTY MAY BE ENFORCED NOTWITHSTANDING ANY STATUTE OF FRAUDS AND
2 WHETHER OR NOT THE ACCOMMODATION PARTY RECEIVES CONSIDERATION FOR
3 THE ACCOMMODATION.

4 (3) A PERSON SIGNING AN INSTRUMENT IS PRESUMED TO BE AN
5 ACCOMMODATION PARTY AND THERE IS NOTICE THAT THE INSTRUMENT IS
6 SIGNED FOR ACCOMMODATION IF THE SIGNATURE IS AN ANOMALOUS
7 ENDORSEMENT OR IS ACCOMPANIED BY WORDS INDICATING THAT THE SIGNER
8 IS ACTING AS SURETY OR GUARANTOR WITH RESPECT TO THE OBLIGATION
9 OF ANOTHER PARTY TO THE INSTRUMENT. EXCEPT AS PROVIDED IN SEC-
10 TION 3605, THE OBLIGATION OF AN ACCOMMODATION PARTY TO PAY THE
11 INSTRUMENT IS NOT AFFECTED BY THE FACT THAT THE PERSON ENFORCING
12 THE OBLIGATION HAD NOTICE WHEN THE INSTRUMENT WAS TAKEN BY THAT
13 PERSON THAT THE ACCOMMODATION PARTY SIGNED THE INSTRUMENT FOR
14 ACCOMMODATION.

15 (4) IF THE SIGNATURE OF A PARTY TO AN INSTRUMENT IS ACCOM-
16 PANIED BY WORDS INDICATING UNAMBIGUOUSLY THAT THE PARTY IS GUAR-
17 ANTEEING COLLECTION RATHER THAN PAYMENT OF THE OBLIGATION OF
18 ANOTHER PARTY TO THE INSTRUMENT, THE SIGNER IS OBLIGED TO PAY THE
19 AMOUNT DUE ON THE INSTRUMENT TO A PERSON ENTITLED TO ENFORCE THE
20 INSTRUMENT ONLY IF (i) EXECUTION OF JUDGMENT AGAINST THE OTHER
21 PARTY HAS BEEN RETURNED UNSATISFIED, (ii) THE OTHER PARTY IS
22 INSOLVENT OR IN AN INSOLVENCY PROCEEDING, (iii) THE OTHER PARTY
23 CANNOT BE SERVED WITH PROCESS, OR (iv) IT IS OTHERWISE APPARENT
24 THAT PAYMENT CANNOT BE OBTAINED FROM THE OTHER PARTY.

25 (5) AN ACCOMMODATION PARTY WHO PAYS THE INSTRUMENT IS ENTI-
26 TLED TO REIMBURSEMENT FROM THE ACCOMMODATED PARTY AND IS ENTITLED
27 TO ENFORCE THE INSTRUMENT AGAINST THE ACCOMMODATED PARTY. AN

1 ACCOMMODATED PARTY WHO PAYS THE INSTRUMENT HAS NO RIGHT OF
2 RECOURSE AGAINST, AND IS NOT ENTITLED TO CONTRIBUTION FROM, AN
3 ACCOMMODATION PARTY.

4 SEC. 3420. (1) THE LAW APPLICABLE TO CONVERSION OF PERSONAL
5 PROPERTY APPLIES TO INSTRUMENTS. AN INSTRUMENT IS ALSO CONVERTED
6 IF IT IS TAKEN BY TRANSFER, OTHER THAN A NEGOTIATION, FROM A
7 PERSON NOT ENTITLED TO ENFORCE THE INSTRUMENT OR A BANK MAKES OR
8 OBTAINS PAYMENT WITH RESPECT TO THE INSTRUMENT FOR A PERSON NOT
9 ENTITLED TO ENFORCE THE INSTRUMENT OR RECEIVE PAYMENT. AN ACTION
10 FOR CONVERSION OF AN INSTRUMENT MAY NOT BE BROUGHT BY (i) THE
11 ISSUER OR ACCEPTOR OF THE INSTRUMENT OR (ii) A PAYEE OR ENDORSEE
12 WHO DID NOT RECEIVE DELIVERY OF THE INSTRUMENT EITHER DIRECTLY OR
13 THROUGH DELIVERY TO AN AGENT OR A CO-PAYEE.

14 (2) IN AN ACTION UNDER SUBSECTION (1), THE MEASURE OF
15 LIABILITY IS PRESUMED TO BE THE AMOUNT PAYABLE ON THE INSTRUMENT,
16 BUT RECOVERY MAY NOT EXCEED THE AMOUNT OF THE PLAINTIFF'S INTER-
17 EST IN THE INSTRUMENT.

18 (3) A REPRESENTATIVE, OTHER THAN A DEPOSITORY BANK, WHO HAS
19 IN GOOD FAITH DEALT WITH AN INSTRUMENT OR ITS PROCEEDS ON BEHALF
20 OF ONE WHO WAS NOT THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT
21 IS NOT LIABLE IN CONVERSION TO THAT PERSON BEYOND THE AMOUNT OF
22 ANY PROCEEDS THAT IT HAS NOT PAID OUT.

23 PART 5. ~~PRESENTMENT, NOTICE OF DISHONOR AND PROTEST~~ DISHONOR

24 Sec. 3501. ~~-(1) Unless excused (section 3511) presentment~~
25 ~~is necessary to charge secondary parties as follows:~~

26 ~~(a) presentment for acceptance is necessary to charge the~~
27 ~~drawer and indorsers of a draft where the draft so provides, or~~

~~1 is payable elsewhere than at the residence or place of business
2 of the drawee, or its date of payment depends upon such
3 presentment. The holder may at his option present for acceptance
4 any other draft payable at a stated date;~~

~~5 (b) presentment for payment is necessary to charge any
6 indorser;~~

~~7 (c) in the case of any drawer, the acceptor of a draft pay-
8 able at a bank or the maker of a note payable at a bank, present-
9 ment for payment is necessary, but failure to make presentment
10 discharges such drawer, acceptor or maker only as stated in sec-
11 tion 3502(1)(b).~~

~~12 (2) Unless excused (section 3511)~~

~~13 (a) notice of any dishonor is necessary to charge any
14 indorser;~~

~~15 (b) in the case of any drawer, the acceptor of a draft pay-
16 able at a bank or the maker of a note payable at a bank, notice
17 of any dishonor is necessary, but failure to give such notice
18 discharges such drawer, acceptor or maker only as stated in sec-
19 tion 3502(1)(b).~~

~~20 (3) Unless excused (section 3511) protest of any dishonor is
21 necessary to charge the drawer and indorsers of any draft which
22 on its face appears to be drawn or payable outside of the states
23 and territories of the United States and the District of
24 Columbia. The holder may at his option make protest of any dis-
25 honor of any other instrument and in the case of a foreign draft
26 may on insolvency of the acceptor before maturity make protest
27 for better security.~~

1 ~~(4) Notwithstanding any provision of this section, neither~~
2 ~~presentment nor notice of dishonor nor protest is necessary to~~
3 ~~charge an indorser who has indorsed an instrument after~~
4 ~~maturity.~~

5 (1) "PRESENTMENT" MEANS A DEMAND MADE BY OR ON BEHALF OF A
6 PERSON ENTITLED TO ENFORCE AN INSTRUMENT (i) TO PAY THE INSTRU-
7 MENT MADE TO THE DRAWEE OR A PARTY OBLIGED TO PAY THE INSTRUMENT
8 OR, IN THE CASE OF A NOTE OR ACCEPTED DRAFT PAYABLE AT A BANK, TO
9 THE BANK, OR (ii) TO ACCEPT A DRAFT MADE TO THE DRAWEE.

10 (2) THE FOLLOWING RULES ARE SUBJECT TO ARTICLE 4, AGREEMENT
11 OF THE PARTIES, AND CLEARINGHOUSE RULES AND THE LIKE:

12 (A) PRESENTMENT MAY BE MADE AT THE PLACE OF PAYMENT OF THE
13 INSTRUMENT AND MUST BE MADE AT THE PLACE OF PAYMENT IF THE
14 INSTRUMENT IS PAYABLE AT A BANK IN THE UNITED STATES; MAY BE MADE
15 BY ANY COMMERCIALY REASONABLE MEANS, INCLUDING AN ORAL, WRITTEN,
16 OR ELECTRONIC COMMUNICATION; IS EFFECTIVE WHEN THE DEMAND FOR
17 PAYMENT OR ACCEPTANCE IS RECEIVED BY THE PERSON TO WHOM PRESENT-
18 MENT IS MADE; AND IS EFFECTIVE IF MADE TO ANY 1 OF 2 OR MORE
19 MAKERS, ACCEPTORS, DRAWEES, OR OTHER PAYORS.

20 (B) UPON DEMAND OF THE PERSON TO WHOM PRESENTMENT IS MADE,
21 THE PERSON MAKING PRESENTMENT MUST (i) EXHIBIT THE INSTRUMENT,
22 (ii) GIVE REASONABLE IDENTIFICATION AND, IF PRESENTMENT IS MADE
23 ON BEHALF OF ANOTHER PERSON, REASONABLE EVIDENCE OF AUTHORITY TO
24 DO SO, AND (iii) SIGN A RECEIPT ON THE INSTRUMENT FOR ANY PAYMENT
25 MADE OR SURRENDER THE INSTRUMENT IF FULL PAYMENT IS MADE.

26 (3) WITHOUT DISHONORING THE INSTRUMENT, THE PARTY TO WHOM
27 PRESENTMENT IS MADE MAY (i) RETURN THE INSTRUMENT FOR LACK OF A

1 NECESSARY ENDORSEMENT, OR (ii) REFUSE PAYMENT OR ACCEPTANCE FOR
2 FAILURE OF THE PRESENTMENT TO COMPLY WITH THE TERMS OF THE
3 INSTRUMENT, AN AGREEMENT OF THE PARTIES, OR OTHER APPLICABLE LAW
4 OR RULE.

5 (4) THE PARTY TO WHOM PRESENTMENT IS MADE MAY TREAT PRESENT-
6 MENT AS OCCURRING ON THE NEXT BUSINESS DAY AFTER THE DAY OF PRE-
7 SENTMENT IF THE PARTY TO WHOM PRESENTMENT IS MADE HAS ESTABLISHED
8 A CUTOFF HOUR NOT EARLIER THAN 2 P.M. FOR THE RECEIPT AND PRO-
9 CESSING OF INSTRUMENTS PRESENTED FOR PAYMENT OR ACCEPTANCE AND
10 PRESENTMENT IS MADE AFTER THE CUTOFF HOUR.

11 Sec. 3502. ~~(1) Where without excuse any necessary present-~~
12 ~~ment or notice of dishonor is delayed beyond the time when it is~~
13 ~~due~~

14 ~~(a) any indorser is discharged; and~~

15 ~~(b) any drawer or the acceptor of a draft payable at a bank~~
16 ~~or the maker of a note payable at a bank who because the drawee~~
17 ~~or payor bank becomes insolvent during the delay is deprived of~~
18 ~~funds maintained with the drawee or payor bank to cover the~~
19 ~~instrument may discharge his liability by written assignment to~~
20 ~~the holder of his rights against the drawee or payor bank in~~
21 ~~respect of such funds, but such drawer, acceptor or maker is not~~
22 ~~otherwise discharged.~~

23 ~~(2) Where without excuse a necessary protest is delayed~~
24 ~~beyond the time when it is due any drawer or indorser is~~
25 ~~discharged.~~

26 (1) DISHONOR OF A NOTE IS GOVERNED BY THE FOLLOWING RULES:

1 (A) IF THE NOTE IS PAYABLE ON DEMAND, THE NOTE IS DISHONORED
2 IF PRESENTMENT IS DULY MADE TO THE MAKER AND THE NOTE IS NOT PAID
3 ON THE DATE OF PRESENTMENT.

4 (B) IF THE NOTE IS NOT PAYABLE ON DEMAND AND IS PAYABLE AT
5 OR THROUGH A BANK OR THE TERMS OF THE NOTE REQUIRE PRESENTMENT,
6 THE NOTE IS DISHONORED IF PRESENTMENT IS DULY MADE AND THE NOTE
7 IS NOT PAID ON THE DAY IT BECOMES PAYABLE OR THE DAY OF PRESENT-
8 MENT, WHICHEVER IS LATER.

9 (C) IF THE NOTE IS NOT PAYABLE ON DEMAND AND SUBDIVISION (B)
10 DOES NOT APPLY, THE NOTE IS DISHONORED IF IT IS NOT PAID ON THE
11 DAY IT BECOMES PAYABLE.

12 (2) DISHONOR OF AN UNACCEPTED DRAFT OTHER THAN A DOCUMENTARY
13 DRAFT IS GOVERNED BY THE FOLLOWING RULES:

14 (A) IF A CHECK IS DULY PRESENTED FOR PAYMENT TO THE PAYOR
15 BANK OTHERWISE THAN FOR IMMEDIATE PAYMENT OVER THE COUNTER, THE
16 CHECK IS DISHONORED IF THE PAYOR BANK MAKES TIMELY RETURN OF THE
17 CHECK OR SENDS TIMELY NOTICE OF DISHONOR OR NONPAYMENT UNDER SEC-
18 TION 4301 OR 4302, OR BECOMES ACCOUNTABLE FOR THE AMOUNT OF THE
19 CHECK UNDER SECTION 4302.

20 (B) IF A DRAFT IS PAYABLE ON DEMAND AND SUBDIVISION (A) DOES
21 NOT APPLY, THE DRAFT IS DISHONORED IF PRESENTMENT FOR PAYMENT IS
22 DULY MADE TO THE DRAWEE AND THE DRAFT IS NOT PAID ON THE DAY OF
23 PRESENTMENT.

24 (C) IF A DRAFT IS PAYABLE ON A DATE STATED IN THE DRAFT, THE
25 DRAFT IS DISHONORED IF (i) PRESENTMENT FOR PAYMENT IS DULY MADE
26 TO THE DRAWEE AND PAYMENT IS NOT MADE ON THE DAY THE DRAFT
27 BECOMES PAYABLE OR THE DAY OF PRESENTMENT, WHICHEVER IS LATER, OR

1 (ii) PRESENTMENT FOR ACCEPTANCE IS DULY MADE BEFORE THE DAY THE
2 DRAFT BECOMES PAYABLE AND THE DRAFT IS NOT ACCEPTED ON THE DAY OF
3 PRESENTMENT.

4 (D) IF A DRAFT IS PAYABLE ON ELAPSE OF A PERIOD OF TIME
5 AFTER SIGHT OR ACCEPTANCE, THE DRAFT IS DISHONORED IF PRESENTMENT
6 FOR ACCEPTANCE IS DULY MADE AND THE DRAFT IS NOT ACCEPTED ON THE
7 DAY OF PRESENTMENT.

8 (3) DISHONOR OF AN UNACCEPTED DOCUMENTARY DRAFT OCCURS
9 ACCORDING TO THE RULES STATED IN SUBSECTION (2)(B), (C), AND (D),
10 EXCEPT THAT PAYMENT OR ACCEPTANCE MAY BE DELAYED WITHOUT DISHONOR
11 UNTIL NO LATER THAN THE CLOSE OF THE THIRD BUSINESS DAY OF THE
12 DRAWEE FOLLOWING THE DAY ON WHICH PAYMENT OR ACCEPTANCE IS
13 REQUIRED BY THOSE PARAGRAPHS.

14 (4) DISHONOR OF AN ACCEPTED DRAFT IS GOVERNED BY THE FOLLOW-
15 ING RULES:

16 (A) IF THE DRAFT IS PAYABLE ON DEMAND, THE DRAFT IS DISHON-
17 ORED IF PRESENTMENT FOR PAYMENT IS DULY MADE TO THE ACCEPTOR AND
18 THE DRAFT IS NOT PAID ON THE DAY OF PRESENTMENT.

19 (B) IF THE DRAFT IS NOT PAYABLE ON DEMAND, THE DRAFT IS DIS-
20 HONORED IF PRESENTMENT FOR PAYMENT IS DULY MADE TO THE ACCEPTOR
21 AND PAYMENT IS NOT MADE ON THE DAY IT BECOMES PAYABLE OR THE DAY
22 OF PRESENTMENT, WHICHEVER IS LATER.

23 (5) IN ANY CASE IN WHICH PRESENTMENT IS OTHERWISE REQUIRED
24 FOR DISHONOR UNDER THIS SECTION AND PRESENTMENT IS EXCUSED UNDER
25 SECTION 3504, DISHONOR OCCURS WITHOUT PRESENTMENT IF THE INSTRU-
26 MENT IS NOT DULY ACCEPTED OR PAID.

1 (6) IF A DRAFT IS DISHONORED BECAUSE TIMELY ACCEPTANCE OF
2 THE DRAFT WAS NOT MADE AND THE PERSON ENTITLED TO DEMAND
3 ACCEPTANCE CONSENTS TO A LATE ACCEPTANCE, FROM THE TIME OF ACCEP-
4 TANCE THE DRAFT IS TREATED AS NEVER HAVING BEEN DISHONORED.

5 Sec. 3503. ~~(1) Unless a different time is expressed in the~~
6 ~~instrument the time for any presentment is determined as~~
7 ~~follows:~~

8 ~~(a) where an instrument is payable at or a fixed period~~
9 ~~after a stated date any presentment for acceptance must be made~~
10 ~~on or before the date it is payable;~~

11 ~~(b) where an instrument is payable after sight it must~~
12 ~~either be presented for acceptance or negotiated within a reason-~~
13 ~~able time after date or issue whichever is later;~~

14 ~~(c) where an instrument shows the date on which it is pay-~~
15 ~~able presentment for payment is due on that date;~~

16 ~~(d) where an instrument is accelerated presentment for pay-~~
17 ~~ment is due within a reasonable time after the acceleration;~~

18 ~~(e) with respect to the liability of any secondary party~~
19 ~~presentment for acceptance or payment of any other instrument is~~
20 ~~due within a reasonable time after such party becomes liable~~
21 ~~thereon.~~

22 ~~(2) A reasonable time for presentment is determined by the~~
23 ~~nature of the instrument, any usage of banking or trade and the~~
24 ~~facts of the particular case. In the case of an uncertified~~
25 ~~check which is drawn and payable within the United States and~~
26 ~~which is not a draft drawn by a bank the following are presumed~~

~~1 to be reasonable periods within which to present for payment or
2 to initiate bank collection:~~

~~3 (a) with respect to the liability of the drawer, 30 days
4 after date or issue whichever is later; and~~

~~5 (b) with respect to the liability of an indorser, 7 days
6 after his indorsement.~~

~~7 (3) Where any presentment is due on a day which is not a
8 full business day for either the person making presentment or the
9 party to pay or accept, presentment is due on the next following
10 day which is a full business day for both parties.~~

~~11 (4) Presentment to be sufficient must be made at a reason-
12 able hour, and if at a bank during its banking day.~~

(1) THE OBLIGATION OF AN ENDORSER STATED IN SECTION 3415(2)
AND THE OBLIGATION OF A DRAWER STATED IN SECTION 3414(4) MAY NOT
BE ENFORCED UNLESS (i) THE ENDORSER OR DRAWER IS GIVEN NOTICE OF
DISHONOR OF THE INSTRUMENT COMPLYING WITH THIS SECTION OR (ii)
NOTICE OF DISHONOR IS EXCUSED UNDER SECTION 3504(2).

(2) NOTICE OF DISHONOR MAY BE GIVEN BY ANY PERSON; MAY BE
GIVEN BY ANY COMMERCIALY REASONABLE MEANS, INCLUDING AN ORAL,
WRITTEN, OR ELECTRONIC COMMUNICATION; AND IS SUFFICIENT IF IT
REASONABLY IDENTIFIES THE INSTRUMENT AND INDICATES THAT THE
INSTRUMENT HAS BEEN DISHONORED OR HAS NOT BEEN PAID OR ACCEPTED.
RETURN OF AN INSTRUMENT GIVEN TO A BANK FOR COLLECTION IS SUFFI-
CIENT NOTICE OF DISHONOR.

(3) SUBJECT TO SECTION 3504(3), WITH RESPECT TO AN INSTRU-
MENT TAKEN FOR COLLECTION BY A COLLECTING BANK, NOTICE OF
DISHONOR MUST BE GIVEN (i) BY THE BANK BEFORE MIDNIGHT OF THE

1 NEXT BANKING DAY FOLLOWING THE BANKING DAY ON WHICH THE BANK
2 RECEIVES NOTICE OF DISHONOR OF THE INSTRUMENT, OR (ii) BY ANY
3 OTHER PERSON WITHIN 30 DAYS FOLLOWING THE DAY ON WHICH THE PERSON
4 RECEIVES NOTICE OF DISHONOR. WITH RESPECT TO ANY OTHER INSTRU-
5 MENT, NOTICE OF DISHONOR MUST BE GIVEN WITHIN 30 DAYS FOLLOWING
6 THE DAY ON WHICH DISHONOR OCCURS.

7 Sec. 3504. ~~(1) Presentment is a demand for acceptance or~~
8 ~~payment made upon the maker, acceptor, drawee or other payor by~~
9 ~~or on behalf of the holder.~~

10 ~~(2) Presentment may be made~~

11 ~~(a) by mail, in which event the time of presentment is~~
12 ~~determined by the time of receipt of the mail; or~~

13 ~~(b) through a clearing house; or~~

14 ~~(c) at the place of acceptance or payment specified in the~~
15 ~~instrument or if there be none at the place of business or resi-~~
16 ~~dence of the party to accept or pay. If neither the party to~~
17 ~~accept or pay nor anyone authorized to act for him is present or~~
18 ~~accessible at such place presentment is excused.~~

19 ~~(3) It may be made~~

20 ~~(a) to any one of 2 or more makers, acceptors, drawees or~~
21 ~~other payors; or~~

22 ~~(b) to any person who has authority to make or refuse the~~
23 ~~acceptance or payment.~~

24 ~~(4) A draft accepted or a note made payable at a bank in the~~
25 ~~United States must be presented at such bank.~~

1 ~~(5) In the cases described in section 4210 presentment may~~
 2 ~~be made in the manner and with the result stated in that~~
 3 ~~section.~~

4 (1) PRESENTMENT FOR PAYMENT OR ACCEPTANCE OF AN INSTRUMENT
 5 IS EXCUSED IF (i) THE PERSON ENTITLED TO PRESENT THE INSTRUMENT
 6 CANNOT WITH REASONABLE DILIGENCE MAKE PRESENTMENT, (ii) THE MAKER
 7 OR ACCEPTOR HAS REPUDIATED AN OBLIGATION TO PAY THE INSTRUMENT OR
 8 IS DEAD OR IN INSOLVENCY PROCEEDINGS, (iii) BY THE TERMS OF THE
 9 INSTRUMENT PRESENTMENT IS NOT NECESSARY TO ENFORCE THE OBLIGATION
 10 OF ENDORSERS OR THE DRAWER, (iv) THE DRAWER OR ENDORSER WHOSE
 11 OBLIGATION IS BEING ENFORCED HAS WAIVED PRESENTMENT OR OTHERWISE
 12 HAS NO REASON TO EXPECT OR RIGHT TO REQUIRE THAT THE INSTRUMENT
 13 BE PAID OR ACCEPTED, OR (v) THE DRAWER INSTRUCTED THE DRAVEE NOT
 14 TO PAY OR ACCEPT THE DRAFT OR THE DRAVEE WAS NOT OBLIGATED TO THE
 15 DRAWER TO PAY THE DRAFT.

16 (2) NOTICE OF DISHONOR IS EXCUSED IF (i) BY THE TERMS OF THE
 17 INSTRUMENT NOTICE OF DISHONOR IS NOT NECESSARY TO ENFORCE THE
 18 OBLIGATION OF A PARTY TO PAY THE INSTRUMENT, OR (ii) THE PARTY
 19 WHOSE OBLIGATION IS BEING ENFORCED WAIVED NOTICE OF DISHONOR. A
 20 WAIVER OF PRESENTMENT IS ALSO A WAIVER OF NOTICE OF DISHONOR.

21 (3) DELAY IN GIVING NOTICE OF DISHONOR IS EXCUSED IF THE
 22 DELAY WAS CAUSED BY CIRCUMSTANCES BEYOND THE CONTROL OF THE
 23 PERSON GIVING THE NOTICE AND THE PERSON GIVING THE NOTICE EXER-
 24 CISED REASONABLE DILIGENCE AFTER THE CAUSE OF THE DELAY CEASED TO
 25 OPERATE.

26 Sec. 3505. ~~(1) The party to whom presentment is made may~~
 27 ~~without dishonor require~~

~~(a) exhibition of the instrument; and~~

~~(b) reasonable identification of the person making present-
ment and evidence of his authority to make it if made for another;
and~~

~~(c) that the instrument be produced for acceptance or pay-
ment at a place specified in it, or if there be none at any place
reasonable in the circumstances; and~~

~~(d) a signed receipt on the instrument for any partial or
full payment and its surrender upon full payment.~~

~~(2) Failure to comply with any such requirement invalidates
the presentment but the person presenting has a reasonable time
in which to comply and the time for acceptance or payment runs
from the time of compliance.~~

(1) THE FOLLOWING ARE ADMISSIBLE AS EVIDENCE AND CREATE A
PRESUMPTION OF DISHONOR AND OF ANY NOTICE OF DISHONOR STATED:

(A) A DOCUMENT REGULAR IN FORM AS PROVIDED IN SUBSECTION (2)
WHICH PURPORTS TO BE A PROTEST.

(B) A PURPORTED STAMP OR WRITING OF THE DRAWEE, PAYOR BANK,
OR PRESENTING BANK ON OR ACCOMPANYING THE INSTRUMENT STATING THAT
ACCEPTANCE OR PAYMENT HAS BEEN REFUSED UNLESS REASONS FOR THE
REFUSAL ARE STATED AND THE REASONS ARE NOT CONSISTENT WITH
DISHONOR.

(C) A BOOK OR RECORD OF THE DRAWEE, PAYOR BANK, OR COLLECT-
ING BANK, KEPT IN THE USUAL COURSE OF BUSINESS WHICH SHOWS DIS-
HONOR, EVEN IF THERE IS NO EVIDENCE OF WHO MADE THE ENTRY.

(2) A PROTEST IS A CERTIFICATE OF DISHONOR MADE BY A UNITED
STATES CONSUL OR VICE CONSUL, OR A NOTARY PUBLIC OR OTHER PERSON

1 AUTHORIZED TO ADMINISTER OATHS BY THE LAW OF THE PLACE WHERE
2 DISHONOR OCCURS. IT MAY BE MADE UPON INFORMATION SATISFACTORY TO
3 THAT PERSON. THE PROTEST MUST IDENTIFY THE INSTRUMENT AND CER-
4 TIFY EITHER THAT PRESENTMENT HAS BEEN MADE OR, IF NOT MADE, THE
5 REASON WHY IT WAS NOT MADE, AND THAT THE INSTRUMENT HAS BEEN DIS-
6 HONORED BY NONACCEPTANCE OR NONPAYMENT. THE PROTEST MAY ALSO
7 CERTIFY THAT NOTICE OF DISHONOR HAS BEEN GIVEN TO SOME OR ALL
8 PARTIES.

9 PART 6. DISCHARGE AND PAYMENT

10 Sec. 3601. ~~(1) The extent of the discharge of any party~~
11 ~~from liability on an instrument is governed by the sections on~~
12 ~~(a) payment or satisfaction (section 3603); or~~
13 ~~(b) tender of payment (section 3604); or~~
14 ~~(c) cancellation or renunciation (section 3605); or~~
15 ~~(d) impairment of right of recourse or of collateral~~
16 ~~(section 3606); or~~
17 ~~(e) reacquisition of the instrument by a prior party~~
18 ~~(section 3208); or~~
19 ~~(f) fraudulent and material alteration (section 3407); or~~
20 ~~(g) certification of a check (section 3411); or~~
21 ~~(h) acceptance varying a draft (section 3412); or~~
22 ~~(i) unexcused delay in presentment or notice of dishonor or~~
23 ~~protest (section 3502).~~
24 ~~(2) Any party is also discharged from his liability on an~~
25 ~~instrument to another party by any other act or agreement with~~
26 ~~such party which would discharge his simple contract for the~~
27 ~~payment of money.~~

1 ~~(3) The liability of all parties is discharged when any~~
2 ~~party who has himself no right of action or recourse on the~~
3 ~~instrument~~

4 ~~(a) reacquires the instrument in his own right; or~~
5 ~~(b) is discharged under any provision of this article,~~
6 ~~except as otherwise provided with respect to discharge for~~
7 ~~impairment of recourse or of collateral (section 3606).~~

8 (1) THE OBLIGATION OF A PARTY TO PAY THE INSTRUMENT IS DIS-
9 CHARGED AS STATED IN THIS ARTICLE OR BY AN ACT OR AGREEMENT WITH
10 THE PARTY WHICH WOULD DISCHARGE AN OBLIGATION TO PAY MONEY UNDER
11 A SIMPLE CONTRACT.

12 (2) DISCHARGE OF THE OBLIGATION OF A PARTY IS NOT EFFECTIVE
13 AGAINST A PERSON ACQUIRING RIGHTS OF A HOLDER IN DUE COURSE OF
14 THE INSTRUMENT WITHOUT NOTICE OF THE DISCHARGE.

15 Sec. 3602. ~~No discharge of any party provided by this~~
16 ~~article is effective against a subsequent holder in due course~~
17 ~~unless he has notice thereof when he takes the instrument.~~ (1)
18 SUBJECT TO SUBSECTION (2), AN INSTRUMENT IS PAID TO THE EXTENT
19 PAYMENT IS MADE (i) BY OR ON BEHALF OF A PARTY OBLIGED TO PAY THE
20 INSTRUMENT, AND (ii) TO A PERSON ENTITLED TO ENFORCE THE
21 INSTRUMENT. TO THE EXTENT OF THE PAYMENT, THE OBLIGATION OF THE
22 PARTY OBLIGED TO PAY THE INSTRUMENT IS DISCHARGED EVEN THOUGH
23 PAYMENT IS MADE WITH KNOWLEDGE OF A CLAIM TO THE INSTRUMENT UNDER
24 SECTION 3306 BY ANOTHER PERSON.

25 (2) THE OBLIGATION OF A PARTY TO PAY THE INSTRUMENT IS NOT
26 DISCHARGED UNDER SUBSECTION (1) IF EITHER OF THE FOLLOWING
27 APPLIES:

1 (A) A CLAIM TO THE INSTRUMENT UNDER SECTION 3306 IS
2 ENFORCEABLE AGAINST THE PARTY RECEIVING PAYMENT AND (i) PAYMENT
3 IS MADE WITH KNOWLEDGE BY THE PAYOR THAT PAYMENT IS PROHIBITED BY
4 INJUNCTION OR SIMILAR PROCESS OF A COURT OF COMPETENT JURISDIC-
5 TION, OR (ii) IN THE CASE OF AN INSTRUMENT OTHER THAN A CASHIER'S
6 CHECK, TELLER'S CHECK, OR CERTIFIED CHECK, THE PARTY MAKING PAY-
7 MENT ACCEPTED, FROM THE PERSON HAVING A CLAIM TO THE INSTRUMENT,
8 INDEMNITY AGAINST LOSS RESULTING FROM REFUSAL TO PAY THE PERSON
9 ENTITLED TO ENFORCE THE INSTRUMENT.

10 (B) THE PERSON MAKING PAYMENT KNOWS THAT THE INSTRUMENT IS A
11 STOLEN INSTRUMENT AND PAYS A PERSON IT KNOWS IS IN WRONGFUL POS-
12 SESSION OF THE INSTRUMENT.

13 Sec. 3603. ~~(1) The liability of any party is discharged to~~
14 ~~the extent of his payment or satisfaction to the holder even~~
15 ~~though it is made with knowledge of a claim of another person to~~
16 ~~the instrument unless prior to such payment or satisfaction the~~
17 ~~person making the claim either supplies indemnity deemed adequate~~
18 ~~by the party seeking the discharge or enjoins payment or satis-~~
19 ~~faction by order of a court of competent jurisdiction in an~~
20 ~~action in which the adverse claimant and the holder are parties.~~
21 ~~This subsection does not, however, result in the discharge of the~~
22 ~~liability~~

23 ~~(a) of a party who in bad faith pays or satisfies a holder~~
24 ~~who acquired the instrument by theft or who (unless having the~~
25 ~~rights of a holder in due course) holds through one who so~~
26 ~~acquired it; or~~

1 ~~(b) of a party (other than an intermediary bank or a payor~~
2 ~~bank which is not a depositary bank) who pays or satisfies the~~
3 ~~holder of an instrument which has been restrictively indorsed in~~
4 ~~a manner not consistent with the terms of such restrictive~~
5 ~~endorsement.~~

6 ~~(2) Payment or satisfaction may be made with the consent of~~
7 ~~the holder by any person including a stranger to the instrument.~~
8 ~~Surrender of the instrument to such a person gives him the rights~~
9 ~~of a transferee (section 320+).~~ (1) IF TENDER OF PAYMENT OF AN
10 OBLIGATION TO PAY AN INSTRUMENT IS MADE TO A PERSON ENTITLED TO
11 ENFORCE THE INSTRUMENT, THE EFFECT OF TENDER IS GOVERNED BY PRIN-
12 CIPLES OF LAW APPLICABLE TO TENDER OF PAYMENT UNDER A SIMPLE
13 CONTRACT.

14 (2) IF TENDER OF PAYMENT OF AN OBLIGATION TO PAY AN INSTRU-
15 MENT IS MADE TO A PERSON ENTITLED TO ENFORCE THE INSTRUMENT AND
16 THE TENDER IS REFUSED, THERE IS DISCHARGE, TO THE EXTENT OF THE
17 AMOUNT OF THE TENDER, OF THE OBLIGATION OF AN ENDORSER OR ACCOM-
18 MODATION PARTY HAVING A RIGHT OF RECOURSE WITH RESPECT TO THE
19 OBLIGATION TO WHICH THE TENDER RELATES.

20 (3) IF TENDER OF PAYMENT OF AN AMOUNT DUE ON AN INSTRUMENT
21 IS MADE TO A PERSON ENTITLED TO ENFORCE THE INSTRUMENT, THE OBLI-
22 GATION OF THE OBLIGOR TO PAY INTEREST AFTER THE DUE DATE ON THE
23 AMOUNT TENDERED IS DISCHARGED. IF PRESENTMENT IS REQUIRED WITH
24 RESPECT TO AN INSTRUMENT AND THE OBLIGOR IS ABLE AND READY TO PAY
25 ON THE DUE DATE AT EVERY PLACE OF PAYMENT STATED IN THE INSTRU-
26 MENT, THE OBLIGOR IS DEEMED TO HAVE MADE TENDER OF PAYMENT ON THE
27 DUE DATE TO THE PERSON ENTITLED TO ENFORCE THE INSTRUMENT.

1 Sec. 3604. ~~(1) Any party making tender of full payment to~~
2 ~~a holder when or after it is due is discharged to the extent of~~
3 ~~all subsequent liability for interest, costs and attorney's~~
4 ~~fees.~~

5 ~~(2) The holder's refusal of such tender wholly discharges~~
6 ~~any party who has a right of recourse against the party making~~
7 ~~the tender.~~

8 ~~(3) Where the maker or acceptor of an instrument payable~~
9 ~~otherwise than on demand is able and ready to pay at every place~~
10 ~~of payment specified in the instrument when it is due, it is~~
11 ~~equivalent to tender.~~ (1) A PERSON ENTITLED TO ENFORCE AN
12 INSTRUMENT, WITH OR WITHOUT CONSIDERATION, MAY DISCHARGE THE
13 OBLIGATION OF A PARTY TO PAY THE INSTRUMENT (i) BY AN INTENTIONAL
14 VOLUNTARY ACT, SUCH AS SURRENDER OF THE INSTRUMENT TO THE PARTY,
15 DESTRUCTION, MUTILATION, OR CANCELLATION OF THE INSTRUMENT, CAN-
16 CELLATION OR STRIKING OUT OF THE PARTY'S SIGNATURE, OR THE ADDI-
17 TION OF WORDS TO THE INSTRUMENT INDICATING DISCHARGE, OR (ii) BY
18 AGREEING NOT TO SUE OR OTHERWISE RENOUNCING RIGHTS AGAINST THE
19 PARTY BY A SIGNED WRITING.

20 (2) CANCELLATION OR STRIKING OUT OF AN ENDORSEMENT PURSUANT
21 TO SUBSECTION (1) DOES NOT AFFECT THE STATUS AND RIGHTS OF A
22 PARTY DERIVED FROM THE ENDORSEMENT.

23 Sec. 3605. ~~(1) The holder of an instrument may even with-~~
24 ~~out consideration discharge any party~~

25 ~~(a) in any manner apparent on the face of the instrument or~~
26 ~~the endorsement, as by intentionally canceling the instrument or~~

~~1 the party's signature by destruction or mutilation, or by
2 striking out the party's signature, or~~

~~3 (b) by renouncing his rights by a writing signed and deliv-
4 ered or by surrender of the instrument to the party to be
5 discharged.~~

~~6 (2) Neither cancellation nor renunciation without surrender
7 of the instrument affects the title thereto.~~ (1) IN THIS SEC-
8 TION, THE TERM "ENDORSER" INCLUDES A DRAWER HAVING THE OBLIGATION
9 DESCRIBED IN SECTION 3414(4).

10 (2) DISCHARGE, UNDER SECTION 3604, OF THE OBLIGATION OF A
11 PARTY TO PAY AN INSTRUMENT DOES NOT DISCHARGE THE OBLIGATION OF
12 AN ENDORSER OR ACCOMMODATION PARTY HAVING A RIGHT OF RECOURSE
13 AGAINST THE DISCHARGED PARTY.

14 (3) IF A PERSON ENTITLED TO ENFORCE AN INSTRUMENT AGREES,
15 WITH OR WITHOUT CONSIDERATION, TO AN EXTENSION OF THE DUE DATE OF
16 THE OBLIGATION OF A PARTY TO PAY THE INSTRUMENT, THE EXTENSION
17 DISCHARGES AN ENDORSER OR ACCOMMODATION PARTY HAVING A RIGHT OF
18 RECOURSE AGAINST THE PARTY WHOSE OBLIGATION IS EXTENDED TO THE
19 EXTENT THE ENDORSER OR ACCOMMODATION PARTY PROVES THAT THE EXTEN-
20 SION CAUSED LOSS TO THE ENDORSER OR ACCOMMODATION PARTY WITH
21 RESPECT TO THE RIGHT OF RECOURSE.

22 (4) IF A PERSON ENTITLED TO ENFORCE AN INSTRUMENT AGREES,
23 WITH OR WITHOUT CONSIDERATION, TO A MATERIAL MODIFICATION OF THE
24 OBLIGATION OF A PARTY OTHER THAN AN EXTENSION OF THE DUE DATE,
25 THE MODIFICATION DISCHARGES THE OBLIGATION OF AN ENDORSER OR
26 ACCOMMODATION PARTY HAVING A RIGHT OF RECOURSE AGAINST THE PERSON
27 WHOSE OBLIGATION IS MODIFIED TO THE EXTENT THE MODIFICATION

1 CAUSES LOSS TO THE ENDORSER OR ACCOMMODATION PARTY WITH RESPECT
2 TO THE RIGHT OF RECOURSE. THE LOSS SUFFERED BY THE ENDORSER OR
3 ACCOMMODATION PARTY AS A RESULT OF THE MODIFICATION IS EQUAL TO
4 THE AMOUNT OF THE RIGHT OF RECOURSE UNLESS THE PERSON ENFORCING
5 THE INSTRUMENT PROVES THAT NO LOSS WAS CAUSED BY THE MODIFICATION
6 OR THAT THE LOSS CAUSED BY THE MODIFICATION WAS AN AMOUNT LESS
7 THAN THE AMOUNT OF THE RIGHT OF RECOURSE.

8 (5) IF THE OBLIGATION OF A PARTY TO PAY AN INSTRUMENT IS
9 SECURED BY AN INTEREST IN COLLATERAL AND A PERSON ENTITLED TO
10 ENFORCE THE INSTRUMENT IMPAIRS THE VALUE OF THE INTEREST IN COL-
11 LATERAL, THE OBLIGATION OF AN ENDORSER OR ACCOMMODATION PARTY
12 HAVING A RIGHT OF RECOURSE AGAINST THE OBLIGOR IS DISCHARGED TO
13 THE EXTENT OF THE IMPAIRMENT. THE VALUE OF AN INTEREST IN COL-
14 LATERAL IS IMPAIRED TO THE EXTENT (i) THE VALUE OF THE INTEREST
15 IS REDUCED TO AN AMOUNT LESS THAN THE AMOUNT OF THE RIGHT OF
16 RECOURSE OF THE PARTY ASSERTING DISCHARGE, OR (ii) THE REDUCTION
17 IN VALUE OF THE INTEREST CAUSES AN INCREASE IN THE AMOUNT BY
18 WHICH THE AMOUNT OF THE RIGHT OF RECOURSE EXCEEDS THE VALUE OF
19 THE INTEREST. THE BURDEN OF PROVING IMPAIRMENT IS ON THE PARTY
20 ASSERTING DISCHARGE.

21 (6) IF THE OBLIGATION OF A PARTY IS SECURED BY AN INTEREST
22 IN COLLATERAL NOT PROVIDED BY AN ACCOMMODATION PARTY AND A PERSON
23 ENTITLED TO ENFORCE THE INSTRUMENT IMPAIRS THE VALUE OF THE
24 INTEREST IN COLLATERAL, THE OBLIGATION OF ANY PARTY WHO IS
25 JOINTLY AND SEVERALLY LIABLE WITH RESPECT TO THE SECURED OBLIGA-
26 TION IS DISCHARGED TO THE EXTENT THE IMPAIRMENT CAUSES THE PARTY
27 ASSERTING DISCHARGE TO PAY MORE THAN THAT PARTY WOULD HAVE BEEN

1 OBLIGED TO PAY, TAKING INTO ACCOUNT RIGHTS OF CONTRIBUTION, IF
2 IMPAIRMENT HAD NOT OCCURRED. IF THE PARTY ASSERTING DISCHARGE IS
3 AN ACCOMMODATION PARTY NOT ENTITLED TO DISCHARGE UNDER
4 SUBSECTION (5), THE PARTY IS DEEMED TO HAVE A RIGHT TO CONTRIBU-
5 TION BASED ON JOINT AND SEVERAL LIABILITY RATHER THAN A RIGHT TO
6 REIMBURSEMENT. THE BURDEN OF PROVING IMPAIRMENT IS ON THE PARTY
7 ASSERTING DISCHARGE.

8 (7) UNDER SUBSECTION (5) OR (6), IMPAIRING VALUE OF AN
9 INTEREST IN COLLATERAL INCLUDES (i) FAILURE TO OBTAIN OR MAINTAIN
10 PERFECTION OR RECORDATION OF THE INTEREST IN COLLATERAL, (ii)
11 RELEASE OF COLLATERAL WITHOUT SUBSTITUTION OF COLLATERAL OF EQUAL
12 VALUE, (iii) FAILURE TO PERFORM A DUTY TO PRESERVE THE VALUE OF
13 COLLATERAL OWED, UNDER ARTICLE 9 OR OTHER LAW, TO A DEBTOR OR
14 SURETY OR OTHER PERSON SECONDARILY LIABLE, OR (iv) FAILURE TO
15 COMPLY WITH APPLICABLE LAW IN DISPOSING OF COLLATERAL.

16 (8) AN ACCOMMODATION PARTY IS NOT DISCHARGED UNDER
17 SUBSECTION (3), (4), OR (5) UNLESS THE PERSON ENTITLED TO ENFORCE
18 THE INSTRUMENT KNOWS OF THE ACCOMMODATION OR HAS NOTICE UNDER
19 SECTION 3419(3) THAT THE INSTRUMENT WAS SIGNED FOR
20 ACCOMMODATION.

21 (9) A PARTY IS NOT DISCHARGED UNDER THIS SECTION IF (i) THE
22 PARTY ASSERTING DISCHARGE CONSENTS TO THE EVENT OR CONDUCT THAT
23 IS THE BASIS OF THE DISCHARGE, OR (ii) THE INSTRUMENT OR A SEPA-
24 RATE AGREEMENT OF THE PARTY PROVIDES FOR WAIVER OF DISCHARGE
25 UNDER THIS SECTION EITHER SPECIFICALLY OR BY GENERAL LANGUAGE
26 INDICATING THAT PARTIES WAIVE DEFENSES BASED ON SURETYSHIP OR
27 IMPAIRMENT OF COLLATERAL.

1 Sec. 4102. (1) To the extent that items within this article
2 are also within ~~the scope of~~ articles 3 and 8, they are subject
3 to ~~the provisions of~~ those articles. ~~In the event of conflict~~
4 ~~the provisions of~~ IF THERE IS CONFLICT, this article ~~govern~~
5 ~~those of~~ GOVERNS article 3 but ~~the provisions of~~ article 8
6 ~~govern those of~~ GOVERNS this article.

7 (2) The liability of a bank for action or non-action with
8 respect to ~~any~~ AN item handled by it for purposes of present-
9 ment, payment, or collection is governed by the law of the place
10 where the bank is located. In the case of action or non-action
11 by or at a branch or separate office of a bank, its liability is
12 governed by the law of the place where the branch or separate
13 office is located.

14 Sec. 4103. (1) The effect of the provisions of this article
15 may be varied by agreement ~~except that no agreement can~~ BUT THE
16 PARTIES TO THE AGREEMENT CANNOT disclaim a bank's responsibility
17 for its ~~own~~ lack of good faith or failure to exercise ordinary
18 care or ~~can~~ limit the measure of damages for ~~such~~ THE lack or
19 failure. ~~; but~~ HOWEVER, the parties may DETERMINE by agreement
20 ~~determine~~ the standards by which ~~such~~ THE BANK'S responsibil-
21 ity is to be measured if ~~such~~ THOSE standards are not mani-
22 festly unreasonable.

23 (2) Federal Reserve regulations and operating ~~letters,~~
24 ~~clearing house~~ CIRCULARS, CLEARING-HOUSE rules, and the like ~~,~~
25 have the effect of agreements under subsection (1), whether or
26 not specifically assented to by all parties interested in items
27 handled.

1 (3) Action or non-action approved by this article or
 2 pursuant to Federal Reserve regulations or operating ~~letters~~
 3 ~~constitutes~~ CIRCULARS IS the exercise of ordinary care and, in
 4 the absence of special instructions, action or non-action consis-
 5 tent with ~~clearing house~~ CLEARING-HOUSE rules and the like or
 6 with a general banking usage not disapproved by this article, IS
 7 prima facie ~~constitutes~~ the exercise of ordinary care.

8 (4) The specification or approval of certain procedures by
 9 this article ~~does not constitute~~ IS NOT disapproval of other
 10 procedures which may be reasonable under the circumstances.

11 (5) The measure of damages for failure to exercise ordinary
 12 care in handling an item is the amount of the item reduced by an
 13 amount ~~which~~ THAT could not have been realized by the ~~use~~
 14 EXERCISE of ordinary care. ~~, and where~~ IF there is ALSO bad
 15 faith, it includes ANY other damages ~~, if any, suffered by~~ the
 16 party SUFFERED as a proximate consequence.

17 Sec. 4104. (1) ~~In~~ AS USED IN this article unless the con-
 18 text otherwise requires:

19 (a) "Account" means any DEPOSITOR CREDIT account with a
 20 bank, ~~and includes a checking, time, interest or savings~~
 21 ~~account;~~ INCLUDING A DEMAND, TIME, SAVINGS, PASSBOOK, SHARE
 22 DRAFT, OR LIKE ACCOUNT, OTHER THAN AN ACCOUNT EVIDENCED BY A CER-
 23 TIFICATE OF DEPOSIT.

24 (b) "Afternoon" means the period of a day between noon and
 25 midnight. ~~—~~

1 (c) "Banking day" means ~~that~~ THE part of ~~any~~ A day on
2 which a bank is open to the public for carrying on substantially
3 all of its banking functions. ~~—~~

4 (d) "~~Clearing house~~ CLEARING-HOUSE" means ~~any~~ AN associ-
5 ation of banks or other payors regularly clearing items. ~~—~~

6 (e) "Customer" means any person having an account with a
7 bank or for whom a bank has agreed to collect items, ~~and~~
8 ~~includes~~ INCLUDING a bank ~~carrying~~ THAT MAINTAINS an account
9 ~~with~~ AT another bank. ~~—~~

10 (f) "Documentary draft" means ~~any negotiable or~~
11 ~~non negotiable draft with accompanying documents, securities or~~
12 ~~other papers to be delivered against honor of the draft;~~ A DRAFT
13 TO BE PRESENTED FOR ACCEPTANCE OR PAYMENT IF SPECIFIED DOCUMENTS,
14 CERTIFICATED SECURITIES, (SECTION 8102) OR INSTRUCTIONS FOR
15 UNCERTIFICATED SECURITIES (SECTION 8308), OR OTHER CERTIFICATES,
16 STATEMENTS, OR THE LIKE ARE TO BE RECEIVED BY THE DRAWEE OR OTHER
17 PAYOR BEFORE ACCEPTANCE OR PAYMENT OF THE DRAFT.

18 (G) "DRAFT" MEANS A DRAFT AS DEFINED IN SECTION 3104 OR AN
19 ITEM, OTHER THAN AN INSTRUMENT, THAT IS AN ORDER.

20 (H) "DRAWEE" MEANS A PERSON ORDERED IN A DRAFT TO MAKE
21 PAYMENT.

22 (I) ~~(g)~~ "Item" means ~~any instrument for the payment of~~
23 ~~money even though it is not negotiable but does not include~~
24 ~~money;~~ AN INSTRUMENT OR A PROMISE OR ORDER TO PAY MONEY HANDLED
25 BY A BANK FOR COLLECTION OR PAY. THE TERM DOES NOT INCLUDE A
26 PAYMENT ORDER GOVERNED BY ARTICLE 2A OR A CREDIT OR DEBIT CARD
27 SLIP.

1 (J) ~~(h)~~ "Midnight deadline" with respect to a bank is
 2 midnight on its next banking day following the banking day on
 3 which it receives the relevant item or notice or from which the
 4 time for taking action commences to run, whichever is later. ~~—~~

5 ~~(i) "Properly payable" includes the availability of funds~~
 6 ~~for payment at the time of decision to pay or dishonor;~~

7 (K) ~~(j)~~ "Settle" means to pay in cash, by ~~clearing house~~
 8 CLEARING-HOUSE settlement, in a charge or credit or by remit-
 9 tance, or otherwise as ~~instructed~~ AGREED. A settlement may be
 10 either provisional or final. ~~—~~

11 (L) ~~(k)~~ "Suspends payments" with respect to a bank means
 12 that it has been closed by order of the supervisory authorities,
 13 that a public officer has been appointed to take it over or that
 14 it ceases or refuses to make payments in the ordinary course of
 15 business.

16 (2) Other definitions applying to this article and the sec-
 17 tions in which they appear are:

18 "AGREEMENT FOR ELECTRONIC PRESENTMENT".	SECTION 4110.
19 "BANK".	SECTION 4105.
20 "Collecting bank".	Section 4105.
21 "Depository bank".	Section 4105.
22 "Intermediary bank".	Section 4105.
23 "Payor bank".	Section 4105.
24 "Presenting bank".	Section 4105.
25 "Remitting bank".	Section 4105.

1 "PRESENTMENT NOTICE". SECTION 4110.

2 (3) The following definitions in other articles apply to
3 this article:

4 "Acceptance".	Section 3410 3409.
5 "ALTERATION".	SECTION 3409.
6 "Certificate of deposit".	Section 3104.
7 "Certification".	Section 3411.
8 "CASHIER'S CHECK".	SECTION 3104.
9 "CERTIFIED CHECK".	SECTION 3409.
10 "Check".	Section 3104.
11 "Draft".	Section 3104.
12 "GOOD FAITH".	SECTION 3103.
13 "Holder in due course".	Section 3302.
14 "INSTRUMENT".	SECTION 3104.
15 "Notice of dishonor".	Section 3508 3503.
16 "ORDER".	SECTION 3103.
17 "ORDINARY CARE".	SECTION 3103.
18 "PERSON ENTITLED TO ENFORCE".	SECTION 3301.
19 "Presentment".	Section 3504 3501.
20 "Protest".	Section 3509.
21 "Secondary party".	Section 3102.
22 "PROMISE".	SECTION 3103.
23 "PROVE".	SECTION 3103.
24 "TELLER'S CHECK".	SECTION 3104.
25 "UNAUTHORIZED SIGNATURE".	SECTION 3403.

1 (4) In addition article 1 contains general definitions and
2 principles of construction and interpretation applicable
3 throughout this article.

4 Sec. 4105. ~~In~~ AS USED IN this article unless the context
5 otherwise requires:

6 (A) "BANK" MEANS A PERSON ENGAGED IN THE BUSINESS OF BANK-
7 ING, INCLUDING A SAVING BANK, SAVING AND LOAN ASSOCIATION, CREDIT
8 UNION, OR TRUST COMPANY.

9 (B) ~~(a)~~ "Depository bank" means the first bank to ~~which~~
10 TAKE an item ~~is transferred for collection~~ even though it is
11 also the payor bank, UNLESS THE ITEM IS PRESENTED FOR IMMEDIATE
12 PAYMENT OVER THE COUNTER.

13 (C) ~~(b)~~ "Payor bank" means a bank ~~by which an item is~~
14 ~~payable as drawn or accepted;~~ THAT IS THE DRAWEE OF A DRAFT.

15 (D) ~~(c)~~ "Intermediary bank" means ~~any~~ A bank to which an
16 item is transferred in course of collection except the depository
17 or payor bank. ~~—~~

18 (E) ~~(d)~~ "Collecting bank" means ~~any~~ A bank handling the
19 item for collection except the payor bank. ~~—~~

20 (F) ~~(e)~~ "Presenting bank" means ~~any~~ A bank presenting an
21 item except a payor bank. ~~—~~

22 ~~(f) "Remitting bank" means any payor or intermediary bank~~
23 ~~remitting for an item.~~

24 Sec. 4106. ~~A branch or separate office of a bank is a sep-~~
25 ~~arate bank for the purpose of computing the time within which and~~
26 ~~determining the place at or to which action may be taken or~~
27 ~~notices or orders shall be given under this article and under~~

1 ~~article 3.~~ (1) IF AN ITEM STATES THAT IT IS "PAYABLE THROUGH" A
 2 BANK IDENTIFIED IN THE ITEM, (i) THE ITEM DESIGNATES THE BANK AS
 3 A COLLECTING BANK AND DOES NOT BY ITSELF AUTHORIZE THE BANK TO
 4 PAY THE ITEM, AND (ii) THE ITEM MAY BE PRESENTED FOR PAYMENT ONLY
 5 BY OR THROUGH THE BANK.

6 (2) IF AN ITEM STATES THAT IT IS "PAYABLE AT" A BANK IDENTI-
 7 FIED IN THE ITEM, (i) THE ITEM DESIGNATES THE BANK AS A COLLECT-
 8 ING BANK AND DOES NOT BY ITSELF AUTHORIZE THE BANK TO PAY THE
 9 ITEM, AND (ii) THE ITEM MAY BE PRESENTED FOR PAYMENT ONLY BY OR
 10 THROUGH THE BANK.

11 (3) IF A DRAFT NAMES A NONBANK DRAWEE AND IT IS UNCLEAR
 12 WHETHER A BANK NAMED IN THE DRAFT IS A CO-DRAWEE OR A COLLECTING
 13 BANK, THE BANK IS A COLLECTING BANK.

14 Sec. 4107. ~~(1) For the purpose of allowing time to process~~
 15 ~~items, prove balances and make the necessary entries on its books~~
 16 ~~to determine its position for the day, a bank may fix an after-~~
 17 ~~noon hour of 2 P.M. or later as a cut off hour for the handling~~
 18 ~~of money and items and the making of entries on its books.~~

19 ~~(2) Any item or deposit of money received on any day after a~~
 20 ~~cut off hour so fixed or after the close of the banking day may~~
 21 ~~be treated as being received at the opening of the next banking~~
 22 ~~day.~~ A BRANCH OR SEPARATE OFFICE OF A BANK IS A SEPARATE BANK
 23 FOR THE PURPOSE OF COMPUTING THE TIME WITHIN WHICH AND DETERMIN-
 24 ING THE PLACE AT OR TO WHICH ACTION MAY BE TAKEN OR NOTICES OR
 25 ORDERS SHALL BE GIVEN UNDER THIS ARTICLE AND UNDER ARTICLE 3.

26 Sec. 4108. ~~(1) Unless otherwise instructed, a collecting~~
 27 ~~bank in a good faith effort to secure payment may, in the case of~~

1 ~~specific items and with or without the approval of any person~~
2 ~~involved, waive, modify or extend time limits imposed or permit~~
3 ~~ted by this act for a period not in excess of an additional bank~~
4 ~~ing day without discharge of secondary parties and without~~
5 ~~liability to its transferor or any prior party.~~

6 ~~(2) Delay by a collecting bank or payor bank beyond time~~
7 ~~limits prescribed or permitted by this act or by instructions is~~
8 ~~excused if caused by interruption of communication facilities,~~
9 ~~suspension of payments by another bank, war, emergency conditions~~
10 ~~or other circumstances beyond the control of the bank provided it~~
11 ~~exercises such diligence as the circumstances require. (1) FOR~~
12 ~~THE PURPOSE OF ALLOWING TIME TO PROCESS ITEMS, PROVE BALANCES AND~~
13 ~~MAKE THE NECESSARY ENTRIES ON ITS BOOKS TO DETERMINE ITS POSITION~~
14 ~~FOR THE DAY, A BANK MAY FIX AN AFTERNOON HOUR OF 2 P.M. OR LATER~~
15 ~~AS A CUT-OFF HOUR FOR THE HANDLING OF MONEY AND ITEMS AND THE~~
16 ~~MAKING OF ENTRIES ON ITS BOOKS.~~

17 (2) AN ITEM OR DEPOSIT OF MONEY RECEIVED ON ANY DAY AFTER A
18 CUT-OFF HOUR SO FIXED OR AFTER THE CLOSE OF THE BANKING DAY MAY
19 BE TREATED AS BEING RECEIVED AT THE OPENING OF THE NEXT BANKING
20 DAY.

21 Sec. 4109. ~~The "process of posting" means the usual proce-~~
22 ~~dure followed by a payor bank in determining to pay an item and~~
23 ~~in recording the payment including 1 or more of the following or~~
24 ~~other steps as determined by the bank:~~

25 ~~(a) verification of any signature;~~

26 ~~(b) ascertaining that sufficient funds are available;~~

~~(c) affixing a "paid" or other stamp;~~

~~(d) entering a charge or entry to a customer's account;~~

~~(e) correcting or reversing an entry or erroneous action~~

~~with respect to the item.~~ (1) UNLESS OTHERWISE INSTRUCTED, A COLLECTING BANK IN A GOOD FAITH EFFORT TO SECURE PAYMENT OF A SPECIFIC ITEM DRAWN ON A PAYOR OTHER THAN A BANK AND WITH OR WITHOUT THE APPROVAL OF ANY PERSON INVOLVED, MAY WAIVE, MODIFY, OR EXTEND TIME LIMITS IMPOSED OR PERMITTED BY THIS ACT FOR A PERIOD NOT EXCEEDING 2 ADDITIONAL BANKING DAYS WITHOUT DISCHARGE OF DRAWERS OR ENDORSERS OR LIABILITY TO ITS TRANSFEROR OR ANY PRIOR PARTY.

(2) DELAY BY A COLLECTING BANK OR PAYOR BANK BEYOND TIME LIMITS PRESCRIBED OR PERMITTED BY THIS ACT OR BY INSTRUCTIONS IS EXCUSED IF (i) THE DELAY IS CAUSED BY INTERRUPTION OF COMMUNICATION OR COMPUTER FACILITIES, SUSPENSION OF PAYMENTS BY ANOTHER BANK, WAR, EMERGENCY CONDITIONS, FAILURE OF EQUIPMENT, OR OTHER CIRCUMSTANCES BEYOND THE CONTROL OF THE BANK AND (ii) THE BANK EXERCISES SUCH DILIGENCE AS THE CIRCUMSTANCES REQUIRE.

SEC. 4110. (1) "AGREEMENT FOR ELECTRONIC PRESENTMENT" MEANS AN AGREEMENT, CLEARING-HOUSE RULE, OR FEDERAL RESERVE REGULATION OR OPERATING CIRCULAR, PROVIDING THAT PRESENTMENT OF AN ITEM MAY BE MADE BY TRANSMISSION OF AN IMAGE OF AN ITEM OR INFORMATION DESCRIBING THE ITEM ("PRESENTMENT NOTICE") RATHER THAN DELIVERY OF THE ITEM ITSELF. THE AGREEMENT MAY PROVIDE FOR PROCEDURES GOVERNING RETENTION, PRESENTMENT, PAYMENT, DISHONOR, AND OTHER MATTERS CONCERNING ITEMS SUBJECT TO THE AGREEMENT.

1 (2) PRESENTMENT OF AN ITEM PURSUANT TO AN AGREEMENT FOR
2 PRESENTMENT IS MADE WHEN THE PRESENTMENT NOTICE IS RECEIVED.

3 (3) IF PRESENTMENT IS MADE BY PRESENTMENT NOTICE, A REFER-
4 ENCE TO "ITEM" OR "CHECK" IN THIS ARTICLE MEANS THE PRESENTMENT
5 NOTICE UNLESS THE CONTEXT OTHERWISE INDICATES.

6 SEC. 4111. AN ACTION TO ENFORCE AN OBLIGATION, DUTY, OR
7 RIGHT ARISING UNDER THIS ARTICLE MUST BE COMMENCED WITHIN 3 YEARS
8 AFTER THE CAUSE OF ACTION ACCRUES.

9 Sec. 4201. (1) Unless a contrary intent clearly appears and
10 ~~prior to~~ BEFORE the time that a settlement given by a collect-
11 ing bank for an item is or becomes final, ~~(subsection (3) of~~
12 ~~section 4211 and sections 4212 and 4213)~~ the bank, WITH RESPECT
13 TO THE ITEM, is an agent or sub-agent of the owner of the item
14 and any settlement given for the item is provisional. This pro-
15 vision applies regardless of the form of indorsement or lack of
16 indorsement and even though credit given for the item is subject
17 to immediate withdrawal as of right or is in fact withdrawn; but
18 the continuance of ownership of an item by its owner and any
19 rights of the owner to proceeds of the item are subject to rights
20 of a collecting bank, such as those resulting from outstanding
21 advances on the item and ~~valid~~ rights of setoff. ~~When~~ IF an
22 item is handled by banks for purposes of presentment, payment,
23 ~~and~~ collection, OR RETURN, the relevant provisions of this
24 article apply even though action of parties clearly establishes
25 that a particular bank has purchased the item and is the owner of
26 it.

1 (2) After an item has been indorsed with the words "pay any
2 bank" or the like, only a bank may acquire the rights of a holder
3 UNTIL THE ITEM HAS BEEN EITHER OF THE FOLLOWING:

4 (a) ~~until the item has been returned~~ RETURNED to the cus-
5 tomer initiating collection. ~~, or~~

6 (b) ~~until the item has been specially indorsed~~ SPECIALLY
7 ENDORSED by a bank to a person who is not a bank.

8 Sec. 4202. (1) A collecting bank must ~~use~~ EXERCISE ordi-
9 nary care in ALL OF THE FOLLOWING:

10 (a) ~~presenting~~ PRESENTING an item or sending it for
11 presentment. ~~, and~~

12 (b) ~~sending~~ SENDING notice of dishonor or nonpayment or
13 returning an item other than a documentary draft to the bank's
14 transferor ~~or directly to the depository bank under subsection~~
15 ~~(2) of section 42+2~~ after learning that the item has not been
16 paid or accepted, as the case may be. ~~, and~~

17 (c) ~~settling~~ SETTLING for an item when the bank receives
18 final settlement. ~~, and~~

19 ~~(d) making or providing for any necessary protest; and~~

20 (D) ~~(e) notifying~~ NOTIFYING its transferor of any loss or
21 delay in transit within a reasonable time after discovery
22 thereof.

23 (2) ~~A collecting bank taking proper action before its mid-~~
24 ~~night deadline following receipt of an item, notice or payment~~
25 ~~acts seasonably; taking proper action within a reasonably longer~~
26 ~~time may be seasonable but the bank has the burden of so~~
27 ~~establishing.~~ A COLLECTING BANK EXERCISES ORDINARY CARE UNDER

1 SUBSECTION (1) BY TAKING PROPER ACTION BEFORE ITS MIDNIGHT
2 DEADLINE FOLLOWING RECEIPT OF AN ITEM, NOTICE, OR SETTLEMENT.
3 TAKING PROPER ACTION WITHIN A REASONABLY LONGER TIME MAY CONSTI-
4 TUTE THE EXERCISE OF ORDINARY CARE, BUT THE BANK HAS THE BURDEN
5 OF ESTABLISHING TIMELINESS.

6 (3) Subject to subsection (1)(a), a bank is not liable for
7 the insolvency, neglect, misconduct, mistake, or default of
8 another bank or person or for loss or destruction of an item IN
9 THE POSSESSION OF OTHERS OR in transit. ~~or in the possession of~~
10 ~~others.~~

11 Sec. 4203. Subject to ~~the provisions of~~ article 3 con-
12 cerning conversion of instruments (section ~~3419~~ 3420) and ~~the~~
13 ~~provisions of both article 3 and this article concerning~~
14 restrictive ~~indorsements~~ ENDORSEMENTS (SECTION 3206) only a
15 collecting bank's transferor can give instructions ~~which~~ THAT
16 affect the bank or constitute notice to it, and a collecting bank
17 is not liable to prior parties for any action taken pursuant to
18 ~~such~~ THE instructions or in accordance with any agreement with
19 its transferor.

20 Sec. 4204. (1) A collecting bank ~~must~~ SHALL send items
21 by A reasonably prompt method, taking into consideration ~~any~~
22 relevant instructions, the nature of the item, the number of
23 ~~such~~ THOSE items on hand, ~~and~~ the cost of collection
24 involved, and the method generally used by it or others to
25 present ~~such~~ THOSE items.

26 (2) A collecting bank may send:

1 (a) ~~any~~ AN item ~~direct~~ DIRECTLY to the payor bank. ~~—~~

2 (b) ~~any~~ AN item to ~~any non bank~~ A NONBANK payor if
3 authorized by its transferor. ~~—, and—~~

4 (c) ~~any~~ AN item other than documentary drafts to ~~any~~
5 ~~non bank~~ A NONBANK payor, if authorized by federal reserve regu-
6 lation or operating ~~letter~~ CIRCULAR, ~~clearing house~~
7 CLEARING-HOUSE rule, or the like.

8 (3) Presentment may be made by a presenting bank at a place
9 where the payor bank OR OTHER PAYOR has requested that present-
10 ment be made.

11 Sec. 4205. ~~(1) A depository bank which has taken an item~~
12 ~~for collection may supply any indorsement of the customer which~~
13 ~~is necessary to title unless the item contains the words "payee's~~
14 ~~indorsement required" or the like. In the absence of such a~~
15 ~~requirement a statement placed on the item by the depository bank~~
16 ~~to the effect that the item was deposited by a customer or cred-~~
17 ~~ited to his account is effective as the customer's indorsement.~~

18 ~~(2) An intermediary bank, or payor bank which is not a~~
19 ~~depository bank, is neither given notice nor otherwise affected~~
20 ~~by a restrictive indorsement of any person except the bank's~~

21 ~~immediate transferor.~~ (1) IF A CUSTOMER DELIVERS AN ITEM TO A
22 DEPOSITORY BANK FOR COLLECTION, THE BOTH OF THE FOLLOWING APPLY:

23 (A) THE DEPOSITORY BANK BECOMES A HOLDER OF THE ITEM AT THE
24 TIME IT RECEIVES THE ITEM FOR COLLECTION IF THE CUSTOMER AT THE
25 TIME OF DELIVERY WAS A HOLDER OF THE ITEM, WHETHER OR NOT THE
26 CUSTOMER ENDORSES THE ITEM, AND, IF THE BANK SATISFIES THE OTHER
27 REQUIREMENTS OF SECTION 3302, IT IS A HOLDER IN DUE COURSE.

1 (B) THE DEPOSITARY BANK WARRANTS TO COLLECTING BANKS, THE
2 PAYOR BANK OR OTHER PAYOR, AND THE DRAWER THAT THE AMOUNT OF THE
3 ITEM WAS PAID TO THE CUSTOMER OR DEPOSITED TO THE CUSTOMER'S
4 ACCOUNT.

5 Sec. 4207. ~~(i) Each customer or collecting bank who~~
6 ~~obtains payment or acceptance of an item and each prior customer~~
7 ~~and collecting bank warrants to the payor bank or other payor who~~
8 ~~in good faith pays or accepts the item that~~

9 ~~(a) he has a good title to the item or is authorized to~~
10 ~~obtain payment or acceptance on behalf of one who has a good~~
11 ~~title; and~~

12 ~~(b) he has no knowledge that the signature of the maker or~~
13 ~~drawer is unauthorized, except that this warranty is not given by~~
14 ~~any customer or collecting bank that is a holder in due course~~
15 ~~and acts in good faith~~

16 ~~(i) to a maker with respect to the maker's own signature; or~~
17 ~~(ii) to a drawer with respect to the drawer's own signature,~~
18 ~~whether or not the drawer is also the drawee; or~~

19 ~~(iii) to an acceptor of an item if the holder in due course~~
20 ~~took the item after the acceptance or obtained the acceptance~~
21 ~~without knowledge that the drawer's signature was unauthorized;~~
22 ~~and~~

23 ~~(c) the item has not been materially altered, except that~~
24 ~~this warranty is not given by any customer or collecting bank~~
25 ~~that is a holder in due course and acts in good faith~~

26 ~~(i) to the maker of a note; or~~

1 ~~(ii) to the drawer of a draft whether or not the drawer is~~
2 ~~also the drawee, or~~

3 ~~(iii) to the acceptor of an item with respect to an alter-~~
4 ~~ation made prior to the acceptance if the holder in due course~~
5 ~~took the item after the acceptance, even though the acceptance~~
6 ~~provided "payable as originally drawn" or equivalent terms; or~~

7 ~~(iv) to the acceptor of an item with respect to an alter-~~
8 ~~ation made after the acceptance.~~

9 ~~(2) Each customer and collecting bank who transfers an item~~
10 ~~and receives a settlement or other consideration for it warrants~~
11 ~~to his transferee and to any subsequent collecting bank who takes~~
12 ~~the item in good faith that~~

13 ~~(a) he has a good title to the item or is authorized to~~
14 ~~obtain payment or acceptance on behalf of one who has a good~~
15 ~~title and the transfer is otherwise rightful; and~~

16 ~~(b) all signatures are genuine or authorized; and~~

17 ~~(c) the item has not been materially altered; and~~

18 ~~(d) no defense of any party is good against him; and~~

19 ~~(e) he has no knowledge of any insolvency proceeding insti-~~
20 ~~tuted with respect to the maker or acceptor or the drawer of an~~
21 ~~unaccepted item.~~

22 ~~In addition each customer and collecting bank so transfer-~~
23 ~~ring an item and receiving a settlement or other consideration~~
24 ~~engages that upon dishonor and any necessary notice of dishonor~~
25 ~~and protest he will take up the item.~~

26 ~~(3) The warranties and the engagement to honor set forth in~~
27 ~~the 2 preceding subsections arise notwithstanding the absence of~~

~~1 indorsement or words of guaranty or warranty in the transfer or
2 presentment and a collecting bank remains liable for their breach
3 despite remittance to its transferor. Damages for breach of such
4 warranties or engagement to honor shall not exceed the considera-
5 tion received by the customer or collecting bank responsible plus
6 finance charges and expenses related to the item, if any.~~

~~7 (4) Unless a claim for breach of warranty under this section
8 is made within a reasonable time after the person claiming learns
9 of the breach, the person liable is discharged to the extent of
10 any loss caused by the delay in making claim.~~ (1) A CUSTOMER OR
11 COLLECTING BANK THAT TRANSFERS AN ITEM AND RECEIVES A SETTLEMENT
12 OR OTHER CONSIDERATION WARRANTS TO THE TRANSFEREE AND TO ANY SUB-
13 SEQUENT COLLECTING BANK ALL OF THE FOLLOWING:

14 (A) THAT THE WARRANTOR IS A PERSON ENTITLED TO ENFORCE THE
15 ITEM.

16 (B) THAT ALL SIGNATURES ON THE ITEM ARE AUTHENTIC AND
17 AUTHORIZED.

18 (C) THAT THE ITEM HAS NOT BEEN ALTERED.

19 (D) THAT THE ITEM IS NOT SUBJECT TO A DEFENSE OR CLAIM IN
20 RECOUPMENT (SECTION 3305(1)) OF ANY PARTY THAT CAN BE ASSERTED
21 AGAINST THE WARRANTOR.

22 (E) THAT THE WARRANTOR HAS NO KNOWLEDGE OF ANY INSOLVENCY
23 PROCEEDING COMMENCED WITH RESPECT TO THE MAKER OR ACCEPTOR OR, IN
24 THE CASE OF AN UNACCEPTED DRAFT, THE DRAWER.

25 (2) IF AN ITEM IS DISHONORED, A CUSTOMER OR COLLECTING BANK
26 TRANSFERRING THE ITEM AND RECEIVING SETTLEMENT OR OTHER
27 CONSIDERATION IS OBLIGED TO PAY THE AMOUNT DUE ON THE ITEM (i)

1 ACCORDING TO THE TERMS OF THE ITEM AT THE TIME IT WAS
2 TRANSFERRED, OR (ii) IF THE TRANSFER WAS OF AN INCOMPLETE ITEM,
3 ACCORDING TO ITS TERMS WHEN COMPLETED AS STATED IN SECTIONS 3115
4 AND 3407. THE OBLIGATION OF A TRANSFEROR IS OWED TO THE TRANS-
5 Feree AND TO ANY SUBSEQUENT COLLECTING BANK THAT TAKES THE ITEM
6 IN GOOD FAITH. A TRANSFEROR CANNOT DISCLAIM ITS OBLIGATION UNDER
7 THIS SUBSECTION BY AN ENDORSEMENT STATING THAT IT IS MADE
8 "WITHOUT RECOURSE" OR OTHERWISE DISCLAIMING LIABILITY.

9 (3) A PERSON TO WHOM THE WARRANTIES UNDER SUBSECTION (1) ARE
10 MADE AND WHO TOOK THE ITEM IN GOOD FAITH MAY RECOVER FROM THE
11 WARRANTOR AS DAMAGES FOR BREACH OF WARRANTY AN AMOUNT EQUAL TO
12 THE LOSS SUFFERED AS A RESULT OF THE BREACH, BUT NOT MORE THAN
13 THE AMOUNT OF THE ITEM PLUS EXPENSES AND LOSS OF INTEREST
14 INCURRED AS A RESULT OF THE BREACH.

15 (4) THE WARRANTIES STATED IN SUBSECTION (1) CANNOT BE DIS-
16 CLAIMED WITH RESPECT TO CHECKS. UNLESS NOTICE OF A CLAIM FOR
17 BREACH OF WARRANTY IS GIVEN TO THE WARRANTOR WITHIN 30 DAYS AFTER
18 THE CLAIMANT HAS REASON TO KNOW OF THE BREACH AND THE IDENTITY OF
19 THE WARRANTOR, THE WARRANTOR IS DISCHARGED TO THE EXTENT OF ANY
20 LOSS CAUSED BY THE DELAY IN GIVING NOTICE OF THE CLAIM.

21 (5) A CAUSE OF ACTION FOR BREACH OF WARRANTY UNDER THIS SEC-
22 TION ACCRUES WHEN THE CLAIMANT HAS REASON TO KNOW OF THE BREACH.

23 Sec. 4208. ~~(1) A bank has a security interest in an item~~
24 ~~and any accompanying documents or the proceeds of either~~

25 ~~(a) in case of an item deposited in an account to the extent~~
26 ~~to which credit given for the item has been withdrawn or applied;~~

1 ~~(b) in case of an item for which it has given credit~~
2 ~~available for withdrawal as of right, to the extent of the credit~~
3 ~~given whether or not the credit is drawn upon and whether or not~~
4 ~~there is a right of charge back; or~~

5 ~~(c) if it makes an advance on or against the item.~~

6 ~~(2) When credit which has been given for several items~~
7 ~~received at one time or pursuant to a single agreement is with-~~
8 ~~drawn or applied in part the security interest remains upon all~~
9 ~~the items, any accompanying documents or the proceeds of either.~~
10 ~~For the purpose of this section, credits first given are first~~
11 ~~withdrawn.~~

12 ~~(3) Receipt by a collecting bank of a final settlement for~~
13 ~~an item is a realization on its security interest in the item,~~
14 ~~accompanying documents and proceeds. To the extent and so long~~
15 ~~as the bank does not receive final settlement for the item or~~
16 ~~give up possession of the item or accompanying documents for pur-~~
17 ~~poses other than collection, the security interest continues and~~
18 ~~is subject to the provisions of article 9 except that~~

19 ~~(a) no security agreement is necessary to make the security~~
20 ~~interest enforceable (subsection (1)(b) of section 9203); and~~

21 ~~(b) no filing is required to perfect the security interest;~~
22 ~~and~~

23 ~~(c) the security interest has priority over conflicting per-~~
24 ~~fected security interests in the item, accompanying documents or~~
25 ~~proceeds. (1) IF AN UNACCEPTED DRAFT IS PRESENTED TO THE DRAWEE~~
26 ~~FOR PAYMENT OR ACCEPTANCE AND THE DRAWEE PAYS OR ACCEPTS THE~~
27 ~~DRAFT, (i) THE PERSON OBTAINING PAYMENT OR ACCEPTANCE, AT THE~~

1 TIME OF PRESENTMENT, AND (ii) A PREVIOUS TRANSFEROR OF THE DRAFT,
2 AT THE TIME OF TRANSFER, WARRANT TO THE DRAVEE THAT PAYS OR
3 ACCEPTS THE DRAFT IN GOOD FAITH ALL OF THE FOLLOWING:

4 (A) THE WARRANTOR IS, OR WAS, AT THE TIME THE WARRANTOR
5 TRANSFERRED THE DRAFT, A PERSON ENTITLED TO ENFORCE THE DRAFT OR
6 AUTHORIZED TO OBTAIN PAYMENT OR ACCEPTANCE OF THE DRAFT ON BEHALF
7 OF A PERSON ENTITLED TO ENFORCE THE DRAFT.

8 (B) THE DRAFT HAS NOT BEEN ALTERED.

9 (C) THE WARRANTOR HAS NO KNOWLEDGE THAT THE SIGNATURE OF THE
10 PURPORTED DRAWER OF THE DRAFT IS UNAUTHORIZED.

11 (2) A DRAVEE MAKING PAYMENT MAY RECOVER FROM A WARRANTOR
12 DAMAGES FOR BREACH OF WARRANTY EQUAL TO THE AMOUNT PAID BY THE
13 DRAVEE LESS THE AMOUNT THE DRAVEE RECEIVED OR IS ENTITLED TO
14 RECEIVE FROM THE DRAWER BECAUSE OF THE PAYMENT. IN ADDITION THE
15 DRAVEE IS ENTITLED TO COMPENSATION FOR EXPENSES AND LOSS OF
16 INTEREST RESULTING FROM THE BREACH. THE RIGHT OF THE DRAVEE TO
17 RECOVER DAMAGES UNDER THIS SUBSECTION IS NOT AFFECTED BY ANY
18 FAILURE OF THE DRAVEE TO EXERCISE ORDINARY CARE IN MAKING
19 PAYMENT. IF THE DRAVEE ACCEPTS THE DRAFT (i) BREACH OF WARRANTY
20 IS A DEFENSE TO THE OBLIGATION OF THE ACCEPTOR, AND (ii) IF THE
21 ACCEPTOR MAKES PAYMENT WITH RESPECT TO THE DRAFT, THE ACCEPTOR IS
22 ENTITLED TO RECOVER FROM A WARRANTOR FOR BREACH OF WARRANTY THE
23 AMOUNTS STATED IN THIS SUBSECTION.

24 (3) IF A DRAVEE ASSERTS A CLAIM FOR BREACH OF WARRANTY UNDER
25 SUBSECTION (1) BASED ON AN UNAUTHORIZED ENDORSEMENT OF THE DRAFT
26 OR AN ALTERATION OF THE DRAFT, THE WARRANTOR MAY DEFEND BY
27 PROVING THAT THE ENDORSEMENT IS EFFECTIVE UNDER SECTION 3404 OR

1 3405 OR THE DRAWER IS PRECLUDED UNDER SECTION 3406 OR 4406 FROM
2 ASSERTING AGAINST THE DRAVEE THE UNAUTHORIZED ENDORSEMENT OR
3 ALTERATION.

4 (4) IF (i) A DISHONORED DRAFT IS PRESENTED FOR PAYMENT TO
5 THE DRAWER OR AN ENDORSER OR (ii) ANY OTHER ITEM IS PRESENTED FOR
6 PAYMENT TO A PARTY OBLIGED TO PAY THE ITEM, AND THE ITEM IS PAID,
7 THE PERSON OBTAINING PAYMENT AND A PRIOR TRANSFEROR OF THE ITEM
8 WARRANT TO THE PERSON MAKING PAYMENT IN GOOD FAITH THAT THE WAR-
9 RANTOR IS, OR WAS, AT THE TIME THE WARRANTOR TRANSFERRED THE
10 ITEM, A PERSON ENTITLED TO ENFORCE THE ITEM OR AUTHORIZED TO
11 OBTAIN PAYMENT ON BEHALF OF A PERSON ENTITLED TO ENFORCE THE
12 ITEM. THE PERSON MAKING PAYMENT MAY RECOVER FROM ANY WARRANTOR
13 FOR BREACH OF WARRANTY AN AMOUNT EQUAL TO THE AMOUNT PAID PLUS
14 EXPENSES AND LOSS OF INTEREST RESULTING FROM THE BREACH.

15 (5) THE WARRANTIES STATED IN SUBSECTIONS (1) AND (4) CANNOT
16 BE DISCLAIMED WITH RESPECT TO CHECKS. UNLESS NOTICE OF A CLAIM
17 FOR BREACH OF WARRANTY IS GIVEN TO THE WARRANTOR WITHIN 30 DAYS
18 AFTER THE CLAIMANT HAS REASON TO KNOW OF THE BREACH AND THE IDEN-
19 TITY OF THE WARRANTOR, THE WARRANTOR IS DISCHARGED TO THE EXTENT
20 OF ANY LOSS CAUSED BY THE DELAY IN GIVING NOTICE OF THE CLAIM.

21 (6) A CAUSE OF ACTION FOR BREACH OF WARRANTY UNDER THIS SEC-
22 TION ACCRUES WHEN THE CLAIMANT HAS REASON TO KNOW OF THE BREACH.

23 Sec. 4209. ~~For purposes of determining its status as a~~
24 ~~holder in due course, the bank has given value to the extent that~~
25 ~~it has a security interest in an item provided that the bank oth-~~
26 ~~erwise complies with the requirements of section 3302 on what~~
27 ~~constitutes a holder in due course.~~ (1) A PERSON WHO ENCODES

1 INFORMATION ON OR WITH RESPECT TO AN ITEM AFTER ISSUE WARRANTS TO
2 ANY SUBSEQUENT COLLECTING BANK AND TO THE PAYOR BANK OR OTHER
3 PAYOR THAT THE INFORMATION IS CORRECTLY ENCODED. IF THE CUSTOMER
4 OF A DEPOSITARY BANK ENCODES, THAT BANK ALSO MAKES THE WARRANTY.

5 (2) A PERSON WHO UNDERTAKES TO RETAIN AN ITEM PURSUANT TO AN
6 AGREEMENT FOR ELECTRONIC PRESENTMENT WARRANTS TO ANY SUBSEQUENT
7 COLLECTING BANK AND TO THE PAYOR BANK OR OTHER PAYOR THAT RETEN-
8 TION AND PRESENTMENT OF THE ITEM COMPLY WITH THE AGREEMENT. IF A
9 CUSTOMER OF A DEPOSITARY BANK UNDERTAKES TO RETAIN AN ITEM, THAT
10 BANK ALSO MAKES THIS WARRANTY.

11 (3) A PERSON TO WHOM WARRANTIES ARE MADE UNDER THIS SECTION
12 AND WHO TOOK THE ITEM IN GOOD FAITH MAY RECOVER FROM THE WARRANT-
13 TOR AS DAMAGES FOR BREACH OF WARRANTY AN AMOUNT EQUAL TO THE LOSS
14 SUFFERED AS A RESULT OF THE BREACH, PLUS EXPENSES AND LOSS OF
15 INTEREST INCURRED AS A RESULT OF THE BREACH.

16 Sec. 4210. ~~(1) Unless otherwise instructed, a collecting~~
17 ~~bank may present an item not payable by, through or at a bank by~~
18 ~~sending to the party to accept or pay a written notice that the~~
19 ~~bank holds the item for acceptance or payment. The notice must~~
20 ~~be sent in time to be received on or before the day when present-~~
21 ~~ment is due and the bank must meet any requirement of the party~~
22 ~~to accept or pay under section 3505 by the close of the bank's~~
23 ~~next banking day after it knows of the requirement.~~

24 ~~(2) Where presentment is made by notice and neither honor~~
25 ~~nor request for compliance with a requirement under section 3505~~
26 ~~is received by the close of business on the day after maturity or~~
27 ~~in the case of demand items by the close of business on the third~~

~~1 banking day after notice was sent, the presenting bank may treat~~
~~2 the item as dishonored and charge any secondary party by sending~~
~~3 him notice of the facts.~~ (1) A COLLECTING BANK HAS A SECURITY
4 INTEREST IN AN ITEM AND ANY ACCOMPANYING DOCUMENTS OR THE PRO-
5 CEEDS OF ANY OF THE FOLLOWING:

6 (A) IN CASE OF AN ITEM DEPOSITED IN AN ACCOUNT TO THE EXTENT
7 TO WHICH CREDIT GIVEN FOR THE ITEM HAS BEEN WITHDRAWN OR
8 APPLIED.

9 (B) IN CASE OF AN ITEM FOR WHICH IT HAS GIVEN CREDIT AVAIL-
10 ABLE FOR WITHDRAWAL AS OF RIGHT, TO THE EXTENT OF THE CREDIT
11 GIVEN WHETHER OR NOT THE CREDIT IS DRAWN UPON AND WHETHER OR NOT
12 THERE IS A RIGHT OF CHARGE-BACK.

13 (C) IF IT MAKES AN ADVANCE ON OR AGAINST THE ITEM.

14 (2) IF CREDIT GIVEN FOR SEVERAL ITEMS RECEIVED AT ONE TIME
15 OR PURSUANT TO A SINGLE AGREEMENT IS WITHDRAWN OR APPLIED IN PART
16 THE SECURITY INTEREST REMAINS UPON ALL THE ITEMS, ANY ACCOMPANY-
17 ING DOCUMENTS OR THE PROCEEDS OF EITHER. FOR THE PURPOSE OF THIS
18 SECTION, CREDITS FIRST GIVEN ARE FIRST WITHDRAWN.

19 (3) RECEIPT BY A COLLECTING BANK OF A FINAL SETTLEMENT FOR
20 AN ITEM IS A REALIZATION ON ITS SECURITY INTEREST IN THE ITEM,
21 ACCOMPANYING DOCUMENTS AND PROCEEDS. SO LONG AS THE BANK DOES
22 NOT RECEIVE FINAL SETTLEMENT FOR THE ITEM OR GIVE UP POSSESSION
23 OF THE ITEM OR ACCOMPANYING DOCUMENTS FOR PURPOSES OTHER THAN
24 COLLECTION, THE SECURITY INTEREST CONTINUES TO THAT EXTENT AND IS
25 SUBJECT TO ARTICLE 9 EXCEPT FOR THE FOLLOWING:

26 (A) NO SECURITY AGREEMENT IS NECESSARY TO MAKE THE SECURITY
27 INTEREST ENFORCEABLE (SUBSECTION (1)(B) OF SECTION 9203).

1 (B) NO FILING IS REQUIRED TO PERFECT THE SECURITY INTEREST.

2 (C) THE SECURITY INTEREST HAS PRIORITY OVER CONFLICTING PER-
3 FECTED SECURITY INTERESTS IN THE ITEM, ACCOMPANYING DOCUMENTS OR
4 PROCEEDS.

5 Sec. 4211. ~~(1) A collecting bank may take in settlement of~~
6 ~~an item~~

7 ~~(a) a check of the remitting bank or of another bank on any~~
8 ~~bank except the remitting bank; or~~

9 ~~(b) a cashier's check or similar primary obligation of a~~
10 ~~remitting bank which is a member of or clears through a member of~~
11 ~~the same clearing house or group as the collecting bank; or~~

12 ~~(c) appropriate authority to charge an account of the remit-~~
13 ~~ting bank or of another bank with the collecting bank; or~~

14 ~~(d) if the item is drawn upon or payable by a person other~~
15 ~~than a bank, a cashier's check, certified check or other bank~~
16 ~~check or obligation.~~

17 ~~(2) If before its midnight deadline the collecting bank~~
18 ~~properly dishonors a remittance check or authorization to charge~~
19 ~~on itself or presents or forwards for collection a remittance~~
20 ~~instrument of or on another bank which is of a kind approved by~~
21 ~~subsection (1) or has not been authorized by it, the collecting~~
22 ~~bank is not liable to prior parties in the event of the dishonor~~
23 ~~of such check, instrument or authorization.~~

24 ~~(3) A settlement for an item by means of a remittance~~
25 ~~instrument or authorization to charge is or becomes a final set-~~
26 ~~tlement as to both the person making and the person receiving the~~
27 ~~settlement~~

1 ~~(a) if the remittance instrument or authorization to charge~~
 2 ~~is of a kind approved by subsection (1) or has not been autho-~~
 3 ~~rized by the person receiving the settlement and in either case~~
 4 ~~the person receiving the settlement acts seasonably before its~~
 5 ~~midnight deadline in presenting, forwarding for collection or~~
 6 ~~paying the instrument or authorization, at the time the remit-~~
 7 ~~tance instrument or authorization is finally paid by the payor by~~
 8 ~~which it is payable;~~

9 ~~(b) if the person receiving the settlement has authorized~~
 10 ~~remittance by a non bank check or obligation or by a cashier's~~
 11 ~~check or similar primary obligation of or a check upon the payor~~
 12 ~~or other remitting bank which is not of a kind approved by sub-~~
 13 ~~section (1)(b), at the time of the receipt of such remittance~~
 14 ~~check or obligation; or~~

15 ~~(c) if in a case not covered by sub paragraphs (a) or (b)~~
 16 ~~the person receiving the settlement fails to seasonably present,~~
 17 ~~forward for collection, pay or return a remittance instrument or~~
 18 ~~authorization to it to charge before its midnight deadline, at~~
 19 ~~such midnight deadline.~~ FOR PURPOSES OF DETERMINING ITS STATUS
 20 AS A HOLDER IN DUE COURSE, A BANK HAS GIVEN VALUE TO THE EXTENT
 21 IT HAS A SECURITY INTEREST IN AN ITEM, IF THE BANK OTHERWISE COM-
 22 PLIES WITH THE REQUIREMENTS OF SECTION 3302 ON WHAT CONSTITUTES A
 23 HOLDER IN DUE COURSE.

24 Sec. 4212. ~~(1) If a collecting bank has made provisional~~
 25 ~~settlement with its customer for an item and itself fails by~~
 26 ~~reason of dishonor, suspension of payments by a bank or otherwise~~
 27 ~~to receive a settlement for the item which is or becomes final,~~

~~1 the bank may revoke the settlement given by it, charge back the
2 amount of any credit given for the item to its customer's account
3 or obtain refund from its customer whether or not it is able to
4 return the items if by its midnight deadline or within a longer
5 reasonable time after it learns the facts it returns the item or
6 sends notification of the facts. These rights to revoke,
7 charge back and obtain refund terminate if and when a settlement
8 for the item received by the bank is or becomes final (subsection
9 (3) of section 4211 and subsections (2) and (3) of section
10 4213).~~

~~11 (2) Within the time and manner prescribed by this section
12 and section 4301, an intermediary or payor bank, as the case may
13 be, may return an unpaid item directly to the depositary bank and
14 may send for collection a draft on the depositary bank and obtain
15 reimbursement. In such case, if the depositary bank has received
16 provisional settlement for the item, it must reimburse the bank
17 drawing the draft and any provisional credits for the item
18 between banks shall become and remain final.~~

~~19 (3) A depositary bank which is also the payor may
20 charge back the amount of an item to its customer's account or
21 obtain refund in accordance with the section governing return of
22 an item received by a payor bank for credit on its books (section
23 4301).~~

~~24 (4) The right to charge back is not affected by~~

~~25 (a) prior use of the credit given for the item; or~~

~~26 (b) failure by any bank to exercise ordinary care with
27 respect to the item but any bank so failing remains liable.~~

1 ~~(5) A failure to charge back or claim refund does not affect~~
2 ~~other rights of the bank against the customer or any other~~
3 ~~party.~~

4 ~~(6) If credit is given in dollars as the equivalent of the~~
5 ~~value of an item payable in a foreign currency the dollar amount~~
6 ~~of any charge back or refund shall be calculated on the basis of~~
7 ~~the buying sight rate for the foreign currency prevailing on the~~
8 ~~day when the person entitled to the charge back or refund learns~~
9 ~~that it will not receive payment in ordinary course.~~ (1) UNLESS
10 OTHERWISE INSTRUCTED, A COLLECTING BANK MAY PRESENT AN ITEM NOT
11 PAYABLE BY, THROUGH OR AT A BANK BY SENDING TO THE PARTY TO
12 ACCEPT OR PAY A WRITTEN NOTICE THAT THE BANK HOLDS THE ITEM FOR
13 ACCEPTANCE OR PAYMENT. THE NOTICE MUST BE SENT IN TIME TO BE
14 RECEIVED ON OR BEFORE THE DAY WHEN PRESENTMENT IS DUE AND THE
15 BANK MUST MEET ANY REQUIREMENT OF THE PARTY TO ACCEPT OR PAY
16 UNDER SECTION 3501 BY THE CLOSE OF THE BANK'S NEXT BANKING DAY
17 AFTER IT KNOWS OF THE REQUIREMENT.

18 (2) IF PRESENTMENT IS MADE BY NOTICE AND PAYMENT, ACCEP-
19 TANCE, OR REQUEST FOR COMPLIANCE WITH A REQUIREMENT UNDER SECTION
20 3501 IS NOT RECEIVED BY THE CLOSE OF BUSINESS ON THE DAY AFTER
21 MATURITY OR IN THE CASE OF DEMAND ITEMS BY THE CLOSE OF BUSINESS
22 ON THE THIRD BANKING DAY AFTER NOTICE WAS SENT, THE PRESENTING
23 BANK MAY TREAT THE ITEM AS DISHONORED AND CHARGE ANY DRAWER OR
24 ENDORSER BY SENDING IT NOTICE OF THE FACTS.

25 Sec. 4213. ~~(1) An item is finally paid by a payor bank~~
26 ~~when the bank has done any of the following, whichever happens~~
27 ~~first:~~

1 ~~(a) paid the item in cash; or~~

2 ~~(b) settled for the item without reserving a right to revoke~~
3 ~~the settlement and without having such right under statute,~~
4 ~~clearing house rule or agreement; or~~

5 ~~(c) completed the process of posting the item to the indi-~~
6 ~~cated account of the drawer, maker or other person to be charged~~
7 ~~therewith; or~~

8 ~~(d) made a provisional settlement for the item and failed to~~
9 ~~revoke the settlement in the time and manner permitted by stat-~~
10 ~~ute, clearing house rule or agreement.~~

11 ~~Upon a final payment under subparagraphs (b), (c) or (d) the~~
12 ~~payor bank shall be accountable for the amount of the item.~~

13 ~~(2) If provisional settlement for an item between the~~
14 ~~presenting and payor banks is made through a clearing house or by~~
15 ~~debits or credits in an account between them, then to the extent~~
16 ~~that provisional debits or credits for the item are entered in~~
17 ~~accounts between the presenting and payor banks or between the~~
18 ~~presenting and successive prior collecting banks seriatim, they~~
19 ~~become final upon final payment of the item by the payor bank.~~

20 ~~(3) If a collecting bank receives a settlement for an item~~
21 ~~which is or becomes final (subsection (3) of section 4211, sub-~~
22 ~~section (2) of section 4213) the bank is accountable to its cus-~~
23 ~~tomers for the amount of the item and any provisional credit given~~
24 ~~for the item in an account with its customer becomes final.~~

25 ~~(4) Subject to any right of the bank to apply the credit to~~
26 ~~an obligation of the customer, credit given by a bank for an item~~

~~1 in an account with its customer becomes available for withdrawal
2 as of right.~~

~~3 (a) in any case where the bank has received a provisional
4 settlement for the item, when such settlement becomes final and
5 the bank has had a reasonable time to learn that the settlement
6 is final;~~

~~7 (b) in any case where the bank is both a depositary bank and
8 a payor bank and the item is finally paid, at the opening of the
9 bank's second banking day following receipt of the item.~~

~~10 (5) A deposit of money in a bank is final when made but,
11 subject to any right of the bank to apply the deposit to an obli-
12 gation of the customer, the deposit becomes available for with-
13 drawal as of right at the opening of the bank's next banking day
14 following receipt of the deposit.~~ (1) WITH RESPECT TO SETTLEMENT
15 BY A BANK, THE MEDIUM AND TIME OF SETTLEMENT MAY BE PRESCRIBED BY
16 FEDERAL RESERVE REGULATIONS OR CIRCULARS, CLEARING-HOUSE RULES,
17 AND THE LIKE, OR AGREEMENT. IN THE ABSENCE OF SUCH PRESCRIPTION,
18 THE FOLLOWING APPLY:

19 (A) THE MEDIUM OF SETTLEMENT IS CASH OR CREDIT TO AN ACCOUNT
20 IN A FEDERAL RESERVE BANK OF OR SPECIFIED BY THE PERSON TO
21 RECEIVE SETTLEMENT.

22 (B) THE TIME OF SETTLEMENT IS AS FOLLOWS:

23 (i) WITH RESPECT TO TENDER OF SETTLEMENT BY CASH, A
24 CASHIER'S CHECK, OR TELLER'S CHECK, WHEN THE CASH OR CHECK IS
25 SENT OR DELIVERED.

26 (ii) WITH RESPECT TO TENDER OF SETTLEMENT BY CREDIT IN AN
27 ACCOUNT IN A FEDERAL RESERVE BANK, WHEN THE CREDIT IS MADE.

1 (iii) WITH RESPECT TO TENDER OF SETTLEMENT BY A CREDIT OR
2 DEBIT TO AN ACCOUNT IN A BANK, WHEN THE CREDIT OR DEBIT IS MADE
3 OR, IN THE CASE OF TENDER OF SETTLEMENT BY AUTHORITY TO CHARGE AN
4 ACCOUNT, WHEN THE AUTHORITY IS SENT OR DELIVERED.

5 (iv) WITH RESPECT TO TENDER OF SETTLEMENT BY A FUNDS TRANS-
6 FER, WHEN PAYMENT IS MADE PURSUANT TO SECTION 4406A(1) TO THE
7 PERSON RECEIVING SETTLEMENT.

8 (2) IF THE TENDER OF SETTLEMENT IS NOT BY A MEDIUM AUTHO-
9 RIZED BY SUBSECTION (1) OR THE TIME OF SETTLEMENT IS NOT FIXED BY
10 SUBSECTION (1), NO SETTLEMENT OCCURS UNTIL THE TENDER OF SETTLE-
11 MENT IS ACCEPTED BY THE PERSON RECEIVING SETTLEMENT.

12 (3) IF SETTLEMENT FOR AN ITEM IS MADE BY CASHIER'S CHECK OR
13 TELLER'S CHECK AND THE PERSON RECEIVING SETTLEMENT, BEFORE ITS
14 MIDNIGHT DEADLINE THEN 1 OF THE FOLLOWING APPLY:

15 (A) PRESENTS OR FORWARDS THE CHECK FOR COLLECTION, SETTLE-
16 MENT IS FINAL WHEN THE CHECK IS FINALLY PAID.

17 (B) FAILS TO PRESENT OR FORWARD THE CHECK FOR COLLECTION,
18 SETTLEMENT IS FINAL AT THE MIDNIGHT DEADLINE OF THE PERSON
19 RECEIVING SETTLEMENT.

20 (4) IF SETTLEMENT FOR AN ITEM IS MADE BY GIVING AUTHORITY TO
21 CHARGE THE ACCOUNT OF THE BANK GIVING SETTLEMENT IN THE BANK
22 RECEIVING SETTLEMENT, SETTLEMENT IS FINAL WHEN THE CHARGE IS MADE
23 BY THE BANK RECEIVING SETTLEMENT IF THERE ARE FUNDS AVAILABLE IN
24 THE ACCOUNT FOR THE AMOUNT OF THE ITEM.

25 Sec. 4214. ~~-(1) Any item in or coming into the possession~~
26 ~~of a payor or collecting bank which suspends payment and which~~
27 ~~item is not finally paid shall be returned by the receiver,~~

~~1 trustee or agent in charge of the closed bank to the presenting
2 bank or the closed bank's customer.~~

~~3 (2) If a payor bank finally pays an item and suspends pay-
4 ments without making a settlement for the item with its customer
5 or the presenting bank which settlement is or becomes final, the
6 owner of the item has a preferred claim against the payor bank.~~

~~7 (3) If a payor bank gives or a collecting bank gives or
8 receives a provisional settlement for an item and thereafter sus-
9 pends payments, the suspension does not prevent or interfere with
10 the settlement becoming final if such finality occurs automati-
11 cally upon the lapse of certain time or the happening of certain
12 events (subsection (3) of section 4211, subsections (1)(d), (2)
13 and (3) of section 4213).~~

~~14 (4) If a collecting bank receives from subsequent parties
15 settlement for an item which settlement is or becomes final and
16 suspends payments without making a settlement for the item with
17 its customer which is or becomes final, the owner of the item has
18 a preferred claim against such collecting bank.~~ (1) IF A COL-
19 LECTING BANK HAS MADE PROVISIONAL SETTLEMENT WITH ITS CUSTOMER
20 FOR AN ITEM AND ITSELF FAILS BY REASON OF DISHONOR, SUSPENSION OF
21 PAYMENTS BY A BANK OR OTHERWISE TO RECEIVE A SETTLEMENT FOR THE
22 ITEM WHICH IS OR BECOMES FINAL, THE BANK MAY REVOKE THE SETTLE-
23 MENT GIVEN BY IT, CHARGE BACK THE AMOUNT OF ANY CREDIT GIVEN FOR
24 THE ITEM TO ITS CUSTOMER'S ACCOUNT OR OBTAIN REFUND FROM ITS CUS-
25 TOMER WHETHER OR NOT IT IS ABLE TO RETURN THE ITEMS IF BY ITS
26 MIDNIGHT DEADLINE OR WITHIN A LONGER REASONABLE TIME AFTER IT
27 LEARNS THE FACTS IT RETURNS THE ITEM OR SENDS NOTIFICATION OF THE

1 FACTS. IF THE RETURN OR NOTICE IS DELAYED BEYOND THE BANK'S
2 MIDNIGHT DEADLINE OR A LONGER REASONABLE TIME AFTER IT LEARNS THE
3 FACTS, THE BANK MAY REVOKE THE SETTLEMENT, CHARGE BACK THE
4 CREDIT, OR OBTAIN RETURN FROM ITS CUSTOMER, BUT IT IS LIABLE FOR
5 ANY LOSS RESULTING FROM THE DELAY. THESE RIGHTS TO REVOKE,
6 CHARGE-BACK AND OBTAIN REFUND TERMINATE IF AND WHEN A SETTLEMENT
7 FOR THE ITEM RECEIVED BY THE BANK IS OR BECOMES FINAL.

8 (2) A COLLECTING BANK RETURNS AN ITEM WHEN IT IS SENT OR
9 DELIVERED TO THE BANK'S CUSTOMER OR TRANSFEROR OR PURSUANT TO ITS
10 INSTRUCTIONS.

11 (3) A DEPOSITARY BANK THAT IS ALSO THE PAYOR MAY CHARGE-BACK
12 THE AMOUNT OF AN ITEM TO ITS CUSTOMER'S ACCOUNT OR OBTAIN REFUND
13 IN ACCORDANCE WITH THE SECTION GOVERNING RETURN OF AN ITEM
14 RECEIVED BY A PAYOR BANK FOR CREDIT ON ITS BOOKS (SECTION 4301).

15 (4) THE RIGHT TO CHARGE-BACK IS NOT AFFECTED BY EITHER OF
16 THE FOLLOWING:

17 (A) PREVIOUS USE OF A CREDIT GIVEN FOR THE ITEM.

18 (B) FAILURE BY ANY BANK TO EXERCISE ORDINARY CARE WITH
19 RESPECT TO THE ITEM, BUT A BANK SO FAILING REMAINS LIABLE.

20 (5) A FAILURE TO CHARGE-BACK OR CLAIM REFUND DOES NOT AFFECT
21 OTHER RIGHTS OF THE BANK AGAINST THE CUSTOMER OR ANY OTHER
22 PARTY.

23 (6) IF CREDIT IS GIVEN IN DOLLARS AS THE EQUIVALENT OF THE
24 VALUE OF AN ITEM PAYABLE IN A FOREIGN MONEY THE DOLLAR AMOUNT OF
25 ANY CHARGE-BACK OR REFUND SHALL BE CALCULATED ON THE BASIS OF THE
26 BANK-OFFERED SPOT RATE FOR THE FOREIGN MONEY PREVAILING ON THE

1 DAY WHEN THE PERSON ENTITLED TO THE CHARGE-BACK OR REFUND LEARNS
2 THAT IT WILL NOT RECEIVE PAYMENT IN ORDINARY COURSE.

3 SEC. 4215. (1) AN ITEM IS FINALLY PAID BY A PAYOR BANK WHEN
4 THE BANK HAS FIRST DONE ANY OF THE FOLLOWING:

5 (A) PAID THE ITEM IN CASH.

6 (B) SETTLED FOR THE ITEM WITHOUT HAVING A RIGHT TO REVOKE
7 THE SETTLEMENT UNDER STATUTE, CLEARING-HOUSE RULE OR AGREEMENT.

8 (C) MADE A PROVISIONAL SETTLEMENT FOR THE ITEM AND FAILED TO
9 REVOKE THE SETTLEMENT IN THE TIME AND MANNER PERMITTED BY STAT-
10 UTE, CLEARING-HOUSE RULE OR AGREEMENT.

11 (2) IF PROVISIONAL SETTLEMENT FOR AN ITEM DOES NOT BECOME
12 FINAL, THE ITEM IS NOT FINALLY PAID.

13 (3) IF PROVISIONAL SETTLEMENT FOR AN ITEM BETWEEN THE
14 PRESENTING AND PAYOR BANKS IS MADE THROUGH A CLEARING-HOUSE OR BY
15 DEBITS OR CREDITS IN AN ACCOUNT BETWEEN THEM, THEN TO THE EXTENT
16 THAT PROVISIONAL DEBITS OR CREDITS FOR THE ITEM ARE ENTERED IN
17 ACCOUNTS BETWEEN THE PRESENTING AND PAYOR BANKS OR BETWEEN THE
18 PRESENTING AND SUCCESSIVE PRIOR COLLECTING BANKS SERIATIM, THEY
19 BECOME FINAL UPON FINAL PAYMENT OF THE ITEMS BY THE PAYOR BANK.

20 (4) IF A COLLECTING BANK RECEIVES A SETTLEMENT FOR AN ITEM
21 WHICH IS OR BECOMES FINAL, THE BANK IS ACCOUNTABLE TO ITS CUS-
22 TOMER FOR THE AMOUNT OF THE ITEM AND ANY PROVISIONAL CREDIT GIVEN
23 FOR THE ITEM IN AN ACCOUNT WITH ITS CUSTOMER BECOMES FINAL.

24 (5) SUBJECT TO (i) APPLICABLE LAW STATING A TIME FOR AVAIL-
25 ABILITY OF FUNDS AND (ii) ANY RIGHT OF THE BANK TO APPLY THE
26 CREDIT TO AN OBLIGATION OF THE CUSTOMER, CREDIT GIVEN BY A BANK

1 FOR AN ITEM IN A CUSTOMER'S ACCOUNT BECOMES AVAILABLE FOR
2 WITHDRAWAL AS OF RIGHT IF EITHER OF THE FOLLOWING APPLY:

3 (A) THE BANK HAS RECEIVED A PROVISIONAL SETTLEMENT FOR THE
4 ITEM, WHEN THE SETTLEMENT BECOMES FINAL AND THE BANK HAS HAD A
5 REASONABLE TIME TO RECEIVE RETURN OF THE ITEM AND THE ITEM HAS
6 NOT BEEN RECEIVED WITHIN THAT TIME.

7 (B) THE BANK IS BOTH THE DEPOSITARY BANK AND THE PAYOR BANK
8 AND THE ITEM IS FINALLY PAID, AT THE OPENING OF THE BANK'S SECOND
9 BANKING DAY FOLLOWING RECEIPT OF THE ITEM.

10 (6) SUBJECT TO APPLICABLE LAW STATING A TIME FOR AVAILABIL-
11 ITY OF FUNDS AND ANY RIGHT OF A BANK TO APPLY A DEPOSIT TO AN
12 OBLIGATION OF THE DEPOSITOR, A DEPOSIT OF MONEY BECOMES AVAILABLE
13 FOR WITHDRAWAL AS OF RIGHT AT THE OPENING OF THE BANK'S NEXT
14 BANKING DAY AFTER RECEIPT OF THE DEPOSIT.

15 SEC. 4216. (1) IF AN ITEM IS IN OR COMES INTO THE POSSES-
16 SION OF A PAYOR OR COLLECTING BANK THAT SUSPENDS PAYMENT AND THE
17 ITEM HAS NOT BEEN FINALLY PAID, THE ITEM MUST BE RETURNED BY THE
18 RECEIVER, TRUSTEE, OR AGENT IN CHARGE OF THE CLOSED BANK TO THE
19 PRESENTING BANK OR THE CLOSED BANK'S CUSTOMER.

20 (2) IF A PAYOR BANK FINALLY PAYS AN ITEM AND SUSPENDS PAY-
21 MENTS WITHOUT MAKING A SETTLEMENT FOR THE ITEM WITH ITS CUSTOMER
22 OR THE PRESENTING BANK WHICH SETTLEMENT IS OR BECOMES FINAL, THE
23 OWNER OF THE ITEM HAS A PREFERRED CLAIM AGAINST THE PAYOR BANK.

24 (3) IF A PAYOR BANK GIVES OR A COLLECTING BANK GIVES OR
25 RECEIVES A PROVISIONAL SETTLEMENT FOR AN ITEM AND THEREAFTER SUS-
26 PENDS PAYMENTS, THE SUSPENSION DOES NOT PREVENT OR INTERFERE WITH
27 THE SETTLEMENT'S BECOMING FINAL IF THE FINALITY OCCURS

1 AUTOMATICALLY UPON THE LAPSE OF CERTAIN TIME OR THE HAPPENING OF
2 CERTAIN EVENTS.

3 (4) IF A COLLECTING BANK RECEIVES FROM SUBSEQUENT PARTIES
4 SETTLEMENT FOR AN ITEM, WHICH SETTLEMENT IS OR BECOMES FINAL AND
5 THE BANK SUSPENDS PAYMENTS WITHOUT MAKING A SETTLEMENT FOR THE
6 ITEM WITH ITS CUSTOMER, WHICH SETTLEMENT IS OR BECOMES FINAL, THE
7 OWNER OF THE ITEM HAS A PREFERRED CLAIM AGAINST THE COLLECTING
8 BANK.

9 Sec. 4301. (1) ~~Where an authorized settlement~~ IF A PAYOR
10 BANK SETTLES for a demand item ~~(~~ other than a documentary draft
11 ~~) received by a payor bank~~ PRESENTED otherwise than for immedi-
12 ate payment over the counter ~~has been made~~ before midnight of
13 the banking day of receipt the payor bank may revoke the settle-
14 ment and recover ~~any payment~~ THE SETTLEMENT if, before it has
15 made final payment ~~(subsection (1) of section 4213)~~ and before
16 its midnight deadline, it DOES EITHER OF THE FOLLOWING:

17 (a) ~~returns~~ RETURNS the item. ~~, or~~

18 (b) ~~sends~~ SENDS written notice of dishonor or nonpayment
19 if the item is ~~held for protest or is otherwise~~ unavailable for
20 return.

21 (2) If a demand item is received by a payor bank for credit
22 on its books, it may return ~~such~~ THE item or send notice of
23 dishonor and may revoke any credit given or recover the amount
24 thereof withdrawn by its customer, if it acts within the time
25 limit and in the manner specified in ~~the preceding~~ subsection
26 (1).

1 (3) Unless previous notice of dishonor has been sent, an
 2 item is dishonored at the time when for purposes of dishonor it
 3 is returned or notice sent in accordance with this section.

4 (4) An item is returned WHEN 1 OF THE FOLLOWING OCCURS:

5 (a) ~~as~~ AS to an item ~~received~~ PRESENTED through a
 6 ~~clearing house~~ CLEARING-HOUSE, when it is delivered to the
 7 presenting or last collecting bank or to the ~~clearing house~~
 8 CLEARING-HOUSE or is sent or delivered in accordance with its
 9 rules. ~~or~~

10 (b) ~~in~~ IN all other cases, when it is sent or delivered to
 11 the bank's customer or transferor or pursuant to his OR HER
 12 instructions.

13 Sec. 4302. ~~In the absence of a valid defense such as~~
 14 ~~breach of a presentment warranty (subsection (1) of section~~
 15 ~~4207), settlement effected or the like, if~~ (1) IF an item is
 16 presented on and received by a payor bank the bank is accountable
 17 for the amount of THE FOLLOWING:

18 (a) ~~a~~ A demand item other than a documentary draft whether
 19 properly payable or not if the bank, in any case where it is not
 20 also the depository bank, retains the item beyond midnight of the
 21 banking day of receipt without settling for it or, regardless of
 22 whether it is also the depository bank, does not pay or return
 23 the item or send notice of dishonor until after its midnight
 24 deadline. ~~or~~

25 (b) ~~any~~ ANY other properly payable item unless within the
 26 time allowed for acceptance or payment of that item the bank

1 either accepts or pays the item or returns it and accompanying
2 documents.

3 (2) THE LIABILITY OF A PAYOR BANK TO PAY AN ITEM PURSUANT TO
4 SUBSECTION (1) IS SUBJECT TO DEFENSES BASED ON BREACH OF A PRE-
5 SENTMENT WARRANTY (SECTION 4208) OR PROOF THAT THE PERSON SEEKING
6 ENFORCEMENT OF THE LIABILITY PRESENTED OR TRANSFERRED THE ITEM
7 FOR THE PURPOSE OF DEFRAUDING THE PAYOR BANK.

8 Sec. 4303. (1) Any knowledge, notice, or ~~stop order~~
9 STOP-PAYMENT ORDER received by, legal process served upon or
10 setoff exercised by a payor bank ~~, whether or not effective~~
11 ~~under other rules of law~~ COMES TOO LATE to terminate, suspend,
12 or modify the bank's right or duty to pay an item or to charge
13 its customer's account for the item ~~, comes too late to so ter-~~
14 ~~minate, suspend or modify such right or duty~~ if the knowledge,
15 notice, ~~stop order~~ STOP-PAYMENT ORDER or legal process is
16 received or served and a reasonable time for the bank to act
17 thereon expires or the setoff is exercised after the ~~bank has~~
18 ~~done any~~ EARLIEST of the following:

19 (a) ~~accepted or certified~~ THE BANK ACCEPTS OR CERTIFIES
20 the item. ~~—~~

21 (b) ~~paid~~ THE BANK PAYS the item in cash. ~~—~~

22 (c) ~~settled~~ THE BANK SETTLES for the item without
23 ~~reserving~~ HAVING a right to revoke the settlement ~~and without~~
24 ~~having such right~~ under statute, ~~clearing house~~ CLEARING-HOUSE
25 rule or agreement. ~~—~~

26 ~~(d) completed the process of posting the item to the~~
27 ~~indicated account of the drawer, maker or other person to be~~

1 ~~charged therewith or otherwise has evidenced by examination of~~
2 ~~such indicated account and by action its decision to pay the~~
3 ~~item; or~~

4 (D) ~~(e) become~~ THE BANK BECOMES accountable for the amount
5 of the item under ~~subsection (1) (d) of section 4213 and sec-~~
6 tion 4302 dealing with the payor bank's responsibility for late
7 return of items.

8 (E) WITH RESPECT TO CHECKS, A CUTOFF HOUR NO EARLIER THAN 1
9 HOUR AFTER THE OPENING OF THE NEXT BANKING DAY AFTER THE BANKING
10 DAY ON WHICH THE BANK RECEIVED THE CHECK AND NO LATER THAN THE
11 CLOSE OF THAT NEXT BANKING DAY OR, IF NO CUTOFF HOUR IS FIXED,
12 THE CLOSE OF THE NEXT BANKING DAY AFTER THE BANKING DAY ON WHICH
13 THE BANK RECEIVED THE CHECK.

14 (2) Subject to ~~the provisions of~~ subsection (1) items may
15 be accepted, paid, certified, or charged to the indicated account
16 of its customer in any order. ~~convenient to the bank.~~

17 Sec. 4401. (1) ~~As against its customer, a~~ A bank may
18 charge against ~~his~~ THE account ~~any~~ OF A CUSTOMER AN item
19 ~~which~~ THAT is ~~otherwise~~ properly payable from that account
20 even though the charge creates an overdraft. AN ITEM IS PROPERLY
21 PAYABLE IF IT IS AUTHORIZED BY THE CUSTOMER AND IS IN ACCORDANCE
22 WITH ANY AGREEMENT BETWEEN THE CUSTOMER AND BANK.

23 (2) A CUSTOMER IS NOT LIABLE FOR THE AMOUNT OF AN OVERDRAFT
24 IF THE CUSTOMER NEITHER SIGNED THE ITEM NOR BENEFITED FROM THE
25 PROCEEDS OF THE ITEM.

26 (3) A BANK MAY CHARGE AGAINST THE ACCOUNT OF A CUSTOMER A
27 CHECK THAT IS OTHERWISE PROPERLY PAYABLE FROM THE ACCOUNT, EVEN

1 THOUGH PAYMENT WAS MADE BEFORE THE DATE OF THE CHECK, UNLESS THE
 2 CUSTOMER HAS GIVEN NOTICE TO THE BANK OF THE POSTDATING DESCRIB-
 3 ING THE CHECK WITH REASONABLE CERTAINTY. THE NOTICE IS EFFECTIVE
 4 FOR THE PERIOD STATED IN SECTION 4403(2) FOR STOP-PAYMENT ORDERS,
 5 AND MUST BE RECEIVED AT SUCH TIME AND IN SUCH MANNER AS TO AFFORD
 6 THE BANK A REASONABLE OPPORTUNITY TO ACT ON IT BEFORE THE BANK
 7 TAKES ANY ACTION WITH RESPECT TO THE CHECK DESCRIBED IN SECTION
 8 4303. IF A BANK CHARGES AGAINST THE ACCOUNT OF A CUSTOMER A
 9 CHECK BEFORE THE DATE STATED IN THE NOTICE OF POSTDATING, THE
 10 BANK IS LIABLE FOR DAMAGES FOR THE LOSS RESULTING FROM ITS ACT.
 11 THE LOSS MAY INCLUDE DAMAGES FOR DISHONOR OF SUBSEQUENT ITEMS
 12 UNDER SECTION 4402.

13 (4) ~~(2)~~ A bank ~~which~~ THAT in good faith makes payment to
 14 a holder may charge the indicated account of its customer accord-
 15 ing to EITHER OF THE FOLLOWING:

16 (a) ~~the~~ THE original ~~tenor~~ TERMS of ~~his~~ THE altered
 17 item. ~~or~~

18 (b) ~~the tenor~~ THE TERMS of ~~his~~ THE completed item, even
 19 though the bank knows the item has been completed unless the bank
 20 has notice that the completion was improper.

21 Sec. 4402. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTI-
 22 CLE, A PAYOR BANK WRONGFULLY DISHONORS AN ITEM IF IT DISHONORS AN
 23 ITEM THAT IS PROPERLY PAYABLE, BUT A BANK MAY DISHONOR AN ITEM
 24 THAT WOULD CREATE AN OVERDRAFT UNLESS IT HAS AGREED TO PAY THE
 25 OVERDRAFT.

26 (2) A payor bank is liable to its customer for damages
 27 proximately caused by the wrongful dishonor of an item. ~~when~~

1 ~~the dishonor occurs through mistake liability~~ LIABILITY is
2 limited to actual damages proved ~~. If so proximately caused and~~
3 ~~proved damages~~ AND may include damages for an arrest or prosecu-
4 tion of the customer or other consequential damages. Whether any
5 consequential damages are proximately caused by the wrongful dis-
6 honor is a question of fact to be determined in each case.

7 (3) A PAYOR BANK'S DETERMINATION OF THE CUSTOMER'S ACCOUNT
8 BALANCE ON WHICH A DECISION TO DISHONOR FOR INSUFFICIENCY OF
9 AVAILABLE FUNDS IS BASED MAY BE MADE AT ANY TIME BETWEEN THE TIME
10 THE ITEM IS RECEIVED BY THE PAYOR BANK AND THE TIME THAT THE
11 PAYOR BANK RETURNS THE ITEM OR GIVES NOTICE IN LIEU OF RETURN,
12 AND NO MORE THAN 1 DETERMINATION NEED BE MADE. IF, AT THE ELEC-
13 TION OF THE PAYOR BANK, A SUBSEQUENT BALANCE DETERMINATION IS
14 MADE FOR THE PURPOSE OF REEVALUATING THE BANK'S DECISION TO DIS-
15 HONOR THE ITEM, THE ACCOUNT BALANCE AT THAT TIME IS DETERMINATIVE
16 OF WHETHER A DISHONOR FOR INSUFFICIENCY OF AVAILABLE FUNDS IS
17 WRONGFUL.

18 Sec. 4403. (1) A customer ~~may by order to his bank stop~~
19 ~~payment of any item payable for his account but the order must~~
20 ~~be~~ OR ANY PERSON AUTHORIZED TO DRAW ON THE ACCOUNT IF THERE IS
21 MORE THAN 1 PERSON MAY STOP PAYMENT OF ANY ITEM DRAWN ON THE
22 CUSTOMER'S ACCOUNT OR CLOSE THE ACCOUNT BY AN ORDER TO THE BANK
23 DESCRIBING THE ITEM OR ACCOUNT WITH REASONABLE CERTAINTY received
24 at ~~such~~ A time and in ~~such~~ A manner ~~as to afford~~ THAT
25 AFFORDS the bank a reasonable opportunity to act on it ~~prior to~~
26 BEFORE any action by the bank with respect to the item described
27 in section 4303. IF THE SIGNATURE OF MORE THAN 1 PERSON IS

1 REQUIRED TO DRAW ON AN ACCOUNT, ANY OF THESE PERSONS MAY STOP
2 PAYMENT OR CLOSE THE ACCOUNT.

3 (2) ~~An oral order is binding upon the bank only for 14 cal-~~
4 ~~endar days unless confirmed in writing within that period. A~~
5 ~~written order is effective for only 6 months unless renewed in~~
6 ~~writing.~~ A STOP-PAYMENT ORDER IS EFFECTIVE FOR 6 MONTHS, BUT IT
7 LAPSES AFTER 14 CALENDAR DAYS IF THE ORIGINAL ORDER WAS ORAL AND
8 WAS NOT CONFIRMED IN WRITING WITHIN THAT PERIOD. A STOP-PAYMENT
9 ORDER MAY BE RENEWED FOR ADDITIONAL 6-MONTH PERIODS BY A WRITING
10 GIVEN TO THE BANK WITHIN A PERIOD DURING WHICH THE STOP-PAYMENT
11 ORDER IS EFFECTIVE.

12 (3) The burden of establishing the fact and amount of loss
13 resulting from the payment of an item contrary to a ~~binding stop~~
14 ~~payment~~ STOP-PAYMENT order OR ORDER TO CLOSE AN ACCOUNT is on
15 the customer. THE LOSS FROM PAYMENT OF AN ITEM CONTRARY TO A
16 STOP-PAYMENT ORDER MAY INCLUDE DAMAGES FOR DISHONOR OF SUBSEQUENT
17 ITEMS UNDER SECTION 4402.

18 Sec. 4406. (1) ~~When a bank sends to its customer a state-~~
19 ~~ment of account accompanied by items paid in good faith in sup-~~
20 ~~port of the debit entries or holds the statement and items pursu-~~
21 ~~ant to a request or instructions of its customer or otherwise in~~
22 ~~a reasonable manner makes the statement and items available to~~
23 ~~the customer, the customer must exercise reasonable care and~~
24 ~~promptness to examine the statement and items to discover his~~
25 ~~unauthorized signature or any alteration on an item and must~~
26 ~~notify the bank promptly after discovery thereof.~~ A BANK THAT
27 SENDS OR MAKES AVAILABLE TO A CUSTOMER A STATEMENT OF ACCOUNT

1 SHOWING PAYMENT OF ITEMS FOR THE ACCOUNT SHALL EITHER RETURN OR
2 MAKE AVAILABLE TO THE CUSTOMER THE ITEMS PAID OR PROVIDE INFORMA-
3 TION IN THE STATEMENT OF ACCOUNT SUFFICIENT TO ALLOW THE CUSTOMER
4 REASONABLY TO IDENTIFY THE ITEMS PAID. THE STATEMENT OF ACCOUNT
5 PROVIDES SUFFICIENT INFORMATION IF THE ITEM IS DESCRIBED BY ITEM
6 NUMBER, AMOUNT, AND DATE OF PAYMENT.

7 (2) IF THE ITEMS ARE NOT RETURNED TO THE CUSTOMER, THE
8 PERSON RETAINING THE ITEMS SHALL EITHER RETAIN THE ITEMS OR, IF
9 THE ITEMS ARE DESTROYED, MAINTAIN THE CAPACITY TO FURNISH LEGIBLE
10 COPIES OF THE ITEMS UNTIL THE EXPIRATION OF 7 YEARS AFTER RECEIPT
11 OF THE ITEMS. A CUSTOMER MAY REQUEST AN ITEM FROM THE BANK THAT
12 PAID THE ITEM, AND THAT BANK MUST PROVIDE IN A REASONABLE TIME
13 EITHER THE ITEM OR, IF THE ITEM HAS BEEN DESTROYED OR IS NOT OTH-
14 ERWISE OBTAINABLE, A LEGIBLE COPY OF THE ITEM.

15 (3) IF A BANK SENDS OR MAKES AVAILABLE A STATEMENT OF
16 ACCOUNT OR ITEMS PURSUANT TO SUBSECTION (1), THE CUSTOMER MUST
17 EXERCISE REASONABLE PROMPTNESS IN EXAMINING THE STATEMENT OR THE
18 ITEMS TO DETERMINE WHETHER ANY PAYMENT WAS NOT AUTHORIZED BECAUSE
19 OF AN ALTERATION OF AN ITEM OR BECAUSE A PURPORTED SIGNATURE BY
20 OR ON BEHALF OF THE CUSTOMER WAS NOT AUTHORIZED. IF, BASED ON
21 THE STATEMENT OR ITEMS PROVIDED, THE CUSTOMER SHOULD REASONABLY
22 HAVE DISCOVERED THE UNAUTHORIZED PAYMENT, THE CUSTOMER MUST
23 PROMPTLY NOTIFY THE BANK OF THE RELEVANT FACTS.

24 (4) ~~-(2)-~~ If the bank ~~-establishes-~~ PROVES that the customer
25 failed, with respect to an item, to comply with the duties
26 imposed on the customer by subsection ~~-(1)-~~ (3), the customer is
27 precluded from asserting against the bank THE FOLLOWING:

1 (a) ~~his~~ THE CUSTOMER'S unauthorized signature or any
2 alteration on the item, if the bank also ~~establishes~~ PROVES
3 that it suffered a loss by reason of ~~such~~ THE failure. ~~and~~

4 (b) ~~an~~ THE CUSTOMER'S unauthorized signature or alteration
5 by the same wrongdoer on any other item paid in good faith by the
6 bank ~~after the first item and statement was available to the~~
7 ~~customer for a reasonable period not exceeding 14 calendar days~~
8 ~~and before the bank receives notification from the customer of~~
9 ~~any such unauthorized signature or alteration~~ IF THE PAYMENT WAS
10 MADE BEFORE THE BANK RECEIVED NOTICE FROM THE CUSTOMER OF THE
11 UNAUTHORIZED SIGNATURE OR ALTERATION AND AFTER THE CUSTOMER HAD
12 BEEN AFFORDED A REASONABLE PERIOD OF TIME, NOT EXCEEDING 30 DAYS,
13 IN WHICH TO EXAMINE THE ITEM OR STATEMENT OF ACCOUNT AND NOTIFY
14 THE BANK.

15 ~~(3) The preclusion under subsection (2) does not apply if~~
16 ~~the customer establishes lack of ordinary care on the part of the~~
17 ~~bank in paying the item(s).~~

18 (5) IF SUBSECTION (4) APPLIES AND THE CUSTOMER PROVES THAT
19 THE BANK FAILED TO EXERCISE ORDINARY CARE IN PAYING THE ITEM AND
20 THAT THE FAILURE SUBSTANTIALLY CONTRIBUTED TO LOSS, THE LOSS IS
21 ALLOCATED BETWEEN THE CUSTOMER PRECLUDED AND THE BANK ASSERTING
22 THE PRECLUSION ACCORDING TO THE EXTENT TO WHICH THE FAILURE OF
23 THE CUSTOMER TO COMPLY WITH SUBSECTION (3) AND THE FAILURE OF THE
24 BANK TO EXERCISE ORDINARY CARE CONTRIBUTED TO THE LOSS. IF THE
25 CUSTOMER PROVES THAT THE BANK DID NOT PAY THE ITEM IN GOOD FAITH,
26 THE PRECLUSION UNDER SUBSECTION (4) DOES NOT APPLY.

1 (6) ~~-(4)-~~ Without regard to care or lack of care of either
 2 the customer or the bank, a customer who does not within 1 year
 3 ~~from the time~~ AFTER the statement ~~and~~ OR items are made
 4 available to the customer (subsection (1)) discover and report
 5 his OR HER unauthorized signature ~~of~~ ON OR any alteration on
 6 the ~~face or back of the item or does not within 3 years from~~
 7 ~~that time discover and report any unauthorized indorsement~~ ITEM
 8 is precluded from asserting against the bank ~~such~~ THE unautho-
 9 rized signature ~~or indorsement~~ or ~~such~~ alteration. IF THERE
 10 IS A PRECLUSION UNDER THIS SUBSECTION, THE PAYOR BANK MAY NOT
 11 RECOVER FOR BREACH OF WARRANTY UNDER SECTION 4208 WITH RESPECT TO
 12 THE UNAUTHORIZED SIGNATURE OR ALTERATION TO WHICH THE PRECLUSION
 13 APPLIES.

14 ~~-(5) If under this section a payor bank has a valid defense~~
 15 ~~against a claim of a customer upon or resulting from payment of~~
 16 ~~an item and waives or fails upon request to assert the defense~~
 17 ~~the bank may not assert against any collecting bank or other~~
 18 ~~prior party presenting or transferring the item a claim based~~
 19 ~~upon the unauthorized signature or alteration giving rise to the~~
 20 ~~customer's claim.~~

21 Sec. 4407. If a payor bank has paid an item over the ~~stop~~
 22 ~~payment~~ order of the drawer or maker TO STOP PAYMENT, OR AFTER
 23 AN ACCOUNT HAS BEEN CLOSED, or otherwise under circumstances
 24 giving a basis for objection by the drawer or maker, to prevent
 25 unjust enrichment and only to the extent necessary to prevent
 26 loss to the bank by reason of its payment of the item, the payor
 27 bank ~~shall be~~ IS subrogated to the rights OF THE FOLLOWING:

1 (a) ~~of~~ OF any holder in due course on the item against the
2 drawer or maker. ~~, and~~

3 (b) ~~of~~ OF the payee or any other holder of the item
4 against the drawer or maker either on the item or under the
5 transaction out of which the item arose. ~~, and~~

6 (c) ~~of~~ OF the drawer or maker against the payee or any
7 other holder of the item with respect to the transaction out of
8 which the item arose.

9 ARTICLE 4A

10 FUNDS TRANSFERS

11 PART 1. SUBJECT MATTERS AND DEFINITIONS

12 SEC. 4A101. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
13 "UNIFORM COMMERCIAL CODE--FUNDS TRANSFERS".

14 SEC. 4A102. EXCEPT AS OTHERWISE PROVIDED IN SECTION 4A108,
15 THIS ARTICLE APPLIES TO FUNDS TRANSFERS DEFINED IN
16 SECTION 4A104.

17 SEC. 4A103. (1) AS USED IN THIS ARTICLE:

18 (A) "PAYMENT ORDER" MEANS AN INSTRUCTION OF A SENDER TO A
19 RECEIVING BANK, TRANSMITTED ORALLY, ELECTRONICALLY, OR IN WRIT-
20 ING, TO PAY, OR TO CAUSE ANOTHER BANK TO PAY, A FIXED OR DETER-
21 MINABLE AMOUNT OF MONEY TO A BENEFICIARY IF THE FOLLOWING APPLY:

22 (i) THE INSTRUCTION DOES NOT STATE A CONDITION TO PAYMENT TO
23 THE BENEFICIARY OTHER THAN TIME OF PAYMENT.

24 (ii) THE RECEIVING BANK IS TO BE REIMBURSED BY DEBITING AN
25 ACCOUNT OF, OR OTHERWISE RECEIVING PAYMENT FROM, THE SENDER.

1 (iii) THE INSTRUCTION IS TRANSMITTED BY THE SENDER DIRECTLY
2 TO THE RECEIVING BANK OR TO AN AGENT, FUNDS-TRANSFER SYSTEM, OR
3 COMMUNICATION SYSTEM FOR TRANSMITTAL TO THE RECEIVING BANK.

4 (B) "BENEFICIARY" MEANS THE PERSON TO BE PAID BY THE
5 BENEFICIARY'S BANK.

6 (C) "BENEFICIARY'S BANK" MEANS THE BANK IDENTIFIED IN A PAY-
7 MENT ORDER IN WHICH AN ACCOUNT OF THE BENEFICIARY IS TO BE CRED-
8 ITED PURSUANT TO THE ORDER OR WHICH OTHERWISE IS TO MAKE PAYMENT
9 TO THE BENEFICIARY IF THE ORDER DOES NOT PROVIDE FOR PAYMENT TO
10 AN ACCOUNT.

11 (D) "RECEIVING BANK" MEANS THE BANK TO WHICH THE SENDER'S
12 INSTRUCTION IS ADDRESSED.

13 (E) "SENDER" MEANS THE PERSON GIVING THE INSTRUCTION TO THE
14 RECEIVING BANK.

15 (2) IF AN INSTRUCTION COMPLYING WITH SUBSECTION (1)(A) IS TO
16 MAKE MORE THAN 1 PAYMENT TO A BENEFICIARY, THE INSTRUCTION IS A
17 SEPARATE PAYMENT ORDER WITH RESPECT TO EACH PAYMENT.

18 (3) A PAYMENT ORDER IS ISSUED WHEN IT IS SENT TO THE RECEIV-
19 ING BANK.

20 SEC. 4A104. AS USED IN THIS ARTICLE:

21 (A) "FUNDS TRANSFER" MEANS THE SERIES OF TRANSACTIONS,
22 BEGINNING WITH THE ORIGINATOR'S PAYMENT ORDER, MADE FOR THE PUR-
23 POSE OF MAKING PAYMENT TO THE BENEFICIARY OF THE ORDER. THE TERM
24 INCLUDES ANY PAYMENT ORDER ISSUED BY THE ORIGINATOR'S BANK OR AN
25 INTERMEDIARY BANK INTENDED TO CARRY OUT THE ORIGINATOR'S PAYMENT
26 ORDER. A FUNDS TRANSFER IS COMPLETED BY ACCEPTANCE BY THE

1 BENEFICIARY'S BANK OF A PAYMENT ORDER FOR THE BENEFIT OF THE
2 BENEFICIARY OF THE ORIGINATOR'S PAYMENT ORDER.

3 (B) "INTERMEDIARY BANK" MEANS A RECEIVING BANK OTHER THAN
4 THE ORIGINATOR'S BANK OR THE BENEFICIARY'S BANK.

5 (C) "ORIGINATOR" MEANS THE SENDER OF THE FIRST PAYMENT ORDER
6 IN A FUNDS TRANSFER.

7 (D) "ORIGINATOR'S BANK" MEANS (i) THE RECEIVING BANK TO
8 WHICH THE PAYMENT ORDER OF THE ORIGINATOR IS ISSUED IF THE ORIGI-
9 NATOR IS NOT A BANK, OR (ii) THE ORIGINATOR IF THE ORIGINATOR IS
10 A BANK.

11 SEC. 4A105. (1) AS USED IN THIS ARTICLE:

12 (A) "AUTHORIZED ACCOUNT" MEANS A DEPOSIT ACCOUNT OF A CUS-
13 TOMER IN A BANK DESIGNATED BY THE CUSTOMER AS A SOURCE OF PAYMENT
14 OF PAYMENT ORDERS ISSUED BY THE CUSTOMER TO THE BANK. IF A CUS-
15 TOMER DOES NOT SO DESIGNATE AN ACCOUNT, ANY ACCOUNT OF THE CUS-
16 TOMER IS AN AUTHORIZED ACCOUNT IF PAYMENT OF A PAYMENT ORDER FROM
17 THAT ACCOUNT IS NOT INCONSISTENT WITH A RESTRICTION ON THE USE OF
18 THAT ACCOUNT.

19 (B) "BANK" MEANS A PERSON ENGAGED IN THE BUSINESS OF BANKING
20 AND INCLUDES A SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT
21 UNION, AND TRUST COMPANY. A BRANCH OR SEPARATE OFFICE OF A BANK
22 IS A SEPARATE BANK FOR PURPOSES OF THIS ARTICLE.

23 (C) "CUSTOMER" MEANS A PERSON, INCLUDING A BANK, HAVING AN
24 ACCOUNT WITH A BANK OR FROM WHOM A BANK HAS AGREED TO RECEIVE
25 PAYMENT ORDERS.

26 (D) "FUNDS-TRANSFER BUSINESS DAY" OF A RECEIVING BANK MEANS
27 THE PART OF A DAY DURING WHICH THE RECEIVING BANK IS OPEN FOR THE

1 RECEIPT, PROCESSING, AND TRANSMITTAL OF PAYMENT ORDERS AND
2 CANCELLATIONS AND AMENDMENTS OF PAYMENT ORDERS.

3 (E) "FUNDS-TRANSFER SYSTEM" MEANS A WIRE TRANSFER NETWORK,
4 AUTOMATED CLEARINGHOUSE, OR OTHER COMMUNICATION SYSTEM OF A
5 CLEARINGHOUSE OR OTHER ASSOCIATION OF BANKS THROUGH WHICH A PAY-
6 MENT ORDER BY A BANK MAY BE TRANSMITTED TO THE BANK TO WHICH THE
7 ORDER IS ADDRESSED.

8 (F) "GOOD FAITH" MEANS HONESTY IN FACT AND THE OBSERVANCE OF
9 REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING.

10 (G) "PROVE" WITH RESPECT TO A FACT MEANS TO MEET THE BURDEN
11 OF ESTABLISHING THE FACT (SECTION 1201(8)).

12 (2) OTHER DEFINITIONS APPLYING TO THIS ARTICLE AND THE SEC-
13 TIONS IN WHICH THEY APPEAR ARE AS FOLLOWS:

14 "ACCEPTANCE".	SECTION 4A209.
15 "BENEFICIARY".	SECTION 4A103.
16 "BENEFICIARY'S BANK".	SECTION 4A103.
17 "EXECUTED".	SECTION 4A301.
18 "EXECUTION DATE".	SECTION 4A301.
19 "FUNDS TRANSFER".	SECTION 4A104.
20 "FUNDS-TRANSFER SYSTEM RULE".	SECTION 4A501.
21 "INTERMEDIARY BANK".	SECTION 4A104.
22 "ORIGINATOR".	SECTION 4A104.
23 "ORIGINATOR'S BANK".	SECTION 4A104.
24 "PAYMENT BY BENEFICIARY'S BANK TO BENEFICIARY".	SECTION 4A405.
25 "PAYMENT BY ORIGINATOR TO BENEFICIARY".	SECTION 4A406.

1 "PAYMENT BY SENDER TO RECEIVING BANK".	SECTION 4A403.
2 "PAYMENT DATE".	SECTION 4A401.
3 "PAYMENT ORDER".	SECTION 4A103.
4 "RECEIVING BANK".	SECTION 4A103.
5 "SECURITY PROCEDURE".	SECTION 4A201.
6 "SENDER".	SECTION 4A103.

7 (3) THE FOLLOWING DEFINITIONS IN ARTICLE 4 APPLY TO THIS
8 ARTICLE:

9 "CLEARINGHOUSE".	SECTION 4104.
10 "ITEM".	SECTION 4104.
11 "SUSPENDS PAYMENTS".	SECTION 4104.

12 (4) IN ADDITION, ARTICLE 1 CONTAINS GENERAL DEFINITIONS AND
13 PRINCIPLES OF CONSTRUCTION AND INTERPRETATION APPLICABLE THROUGH-
14 OUT THIS ARTICLE.

15 SEC. 4A106. (1) THE TIME OF RECEIPT OF A PAYMENT ORDER OR
16 COMMUNICATION CANCELING OR AMENDING A PAYMENT ORDER IS DETERMINED
17 BY THE RULES APPLICABLE TO RECEIPT OF A NOTICE STATED IN
18 SECTION 1201(27). A RECEIVING BANK MAY FIX A CUTOFF TIME OR
19 TIMES ON A FUNDS-TRANSFER BUSINESS DAY FOR THE RECEIPT AND PRO-
20 CESSING OF PAYMENT ORDERS AND COMMUNICATIONS CANCELING OR AMEND-
21 ING PAYMENT ORDERS. DIFFERENT CUTOFF TIMES MAY APPLY TO PAYMENT
22 ORDERS, CANCELLATIONS, OR AMENDMENTS, OR TO DIFFERENT CATEGORIES
23 OF PAYMENT ORDERS, CANCELLATIONS, OR AMENDMENTS. A CUTOFF TIME
24 MAY APPLY TO SENDERS GENERALLY OR DIFFERENT CUTOFF TIMES MAY
25 APPLY TO DIFFERENT SENDERS OR CATEGORIES OF PAYMENT ORDERS. IF A
26 PAYMENT ORDER OR COMMUNICATION CANCELING OR AMENDING A PAYMENT

1 ORDER IS RECEIVED AFTER THE CLOSE OF A FUNDS-TRANSFER BUSINESS
2 DAY OR AFTER THE APPROPRIATE CUTOFF TIME ON A FUNDS-TRANSFER
3 BUSINESS DAY, THE RECEIVING BANK MAY TREAT THE PAYMENT ORDER OR
4 COMMUNICATION AS RECEIVED AT THE OPENING OF THE NEXT
5 FUNDS-TRANSFER BUSINESS DAY.

6 (2) IF THIS ARTICLE REFERS TO AN EXECUTION DATE OR PAYMENT
7 DATE OR STATES A DAY ON WHICH A RECEIVING BANK IS REQUIRED TO
8 TAKE ACTION, AND THE DATE OR DAY DOES NOT FALL ON A
9 FUNDS-TRANSFER BUSINESS DAY, THE NEXT DAY THAT IS A
10 FUNDS-TRANSFER BUSINESS DAY IS TREATED AS THE DATE OR DAY STATED,
11 UNLESS THE CONTRARY IS STATED IN THIS ARTICLE.

12 SEC. 4A107. REGULATIONS OF THE BOARD OF GOVERNORS OF THE
13 FEDERAL RESERVE SYSTEM AND OPERATING CIRCULARS OF THE FEDERAL
14 RESERVE BANKS SUPERSEDE ANY INCONSISTENT PROVISION OF THIS ARTI-
15 CLE TO THE EXTENT OF THE INCONSISTENCY.

16 SEC. 4A108. THIS ARTICLE DOES NOT APPLY TO A FUNDS TRANSFER
17 ANY PART OF WHICH IS GOVERNED BY THE ELECTRONIC FUND TRANSFER ACT
18 OF 1978, TITLE XX, PUBLIC LAW 95-630, 92 STAT. 3728, 15 U.S.C.
19 1693.

20 PART 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER

21 SEC. 4A201. "SECURITY PROCEDURE" MEANS A PROCEDURE ESTAB-
22 LISHED BY AGREEMENT OF A CUSTOMER AND A RECEIVING BANK FOR THE
23 PURPOSE OF (i) VERIFYING THAT A PAYMENT ORDER OR COMMUNICATION
24 AMENDING OR CANCELING A PAYMENT ORDER IS THAT OF THE CUSTOMER, OR
25 (ii) DETECTING ERROR IN THE TRANSMISSION OF THE CONTENT OF THE
26 PAYMENT ORDER OR COMMUNICATION. A SECURITY PROCEDURE MAY REQUIRE
27 THE USE OF ALGORITHMS OR OTHER CODES, IDENTIFYING WORDS OR

1 NUMBERS, ENCRYPTION, CALLBACK PROCEDURES, OR SIMILAR SECURITY
2 DEVICES. COMPARISON OF A SIGNATURE ON A PAYMENT ORDER OR COMMU-
3 NICATION WITH AN AUTHORIZED SPECIMEN SIGNATURE OF THE CUSTOMER IS
4 NOT BY ITSELF A SECURITY PROCEDURE.

5 SEC. 4A202. (1) A PAYMENT ORDER RECEIVED BY THE RECEIVING
6 BANK IS THE AUTHORIZED ORDER OF THE PERSON IDENTIFIED AS SENDER
7 IF THAT PERSON AUTHORIZED THE ORDER OR IS OTHERWISE BOUND BY IT
8 UNDER THE LAW OF AGENCY.

9 (2) IF A BANK AND ITS CUSTOMER HAVE AGREED THAT THE AUTHEN-
10 TICITY OF PAYMENT ORDERS ISSUED TO THE BANK IN THE NAME OF THE
11 CUSTOMER AS SENDER WILL BE VERIFIED PURSUANT TO A SECURITY PROCE-
12 DURE, A PAYMENT ORDER RECEIVED BY THE RECEIVING BANK IS EFFECTIVE
13 AS THE ORDER OF THE CUSTOMER, WHETHER OR NOT AUTHORIZED, IF (i)
14 THE SECURITY PROCEDURE IS A COMMERCIALY REASONABLE METHOD OF
15 PROVIDING SECURITY AGAINST UNAUTHORIZED PAYMENT ORDERS, AND (ii)
16 THE BANK PROVES THAT IT ACCEPTED THE PAYMENT ORDER IN GOOD FAITH
17 AND IN COMPLIANCE WITH THE SECURITY PROCEDURE AND ANY WRITTEN
18 AGREEMENT OR INSTRUCTION OF THE CUSTOMER RESTRICTING ACCEPTANCE
19 OF PAYMENT ORDERS ISSUED IN THE NAME OF THE CUSTOMER. THE BANK
20 IS NOT REQUIRED TO FOLLOW AN INSTRUCTION THAT VIOLATES A WRITTEN
21 AGREEMENT WITH THE CUSTOMER OR NOTICE OF WHICH IS NOT RECEIVED AT
22 A TIME AND IN A MANNER AFFORDING THE BANK A REASONABLE OPPORTU-
23 NITY TO ACT ON IT BEFORE THE PAYMENT ORDER IS ACCEPTED.

24 (3) COMMERCIAL REASONABLENESS OF A SECURITY PROCEDURE IS A
25 QUESTION OF LAW TO BE DETERMINED BY CONSIDERING THE WISHES OF THE
26 CUSTOMER EXPRESSED TO THE BANK, THE CIRCUMSTANCES OF THE CUSTOMER
27 KNOWN TO THE BANK, INCLUDING THE SIZE, TYPE, AND FREQUENCY OF

1 PAYMENT ORDERS NORMALLY ISSUED BY THE CUSTOMER TO THE BANK,
2 ALTERNATIVE SECURITY PROCEDURES OFFERED TO THE CUSTOMER, AND
3 SECURITY PROCEDURES IN GENERAL USE BY CUSTOMERS AND RECEIVING
4 BANKS SIMILARY SITUATED. A SECURITY PROCEDURE IS DEEMED TO BE
5 COMMERCIALY REASONABLE IF (i) THE SECURITY PROCEDURE WAS CHOSEN
6 BY THE CUSTOMER AFTER THE BANK OFFERED, AND THE CUSTOMER REFUSED,
7 A SECURITY PROCEDURE THAT WAS COMMERCIALY REASONABLE FOR THAT
8 CUSTOMER, AND (ii) THE CUSTOMER EXPRESSLY AGREED IN WRITING TO BE
9 BOUND BY ANY PAYMENT ORDER, WHETHER OR NOT AUTHORIZED, ISSUED IN
10 ITS NAME AND ACCEPTED BY THE BANK IN COMPLIANCE WITH THE SECURITY
11 PROCEDURE CHOSEN BY THE CUSTOMER.

12 (4) THE TERM "SENDER" IN THIS ARTICLE INCLUDES THE CUSTOMER
13 IN WHOSE NAME A PAYMENT ORDER IS ISSUED IF THE ORDER IS THE
14 AUTHORIZED ORDER OF THE CUSTOMER UNDER SUBSECTION (1), OR IT IS
15 EFFECTIVE AS THE ORDER OF THE CUSTOMER UNDER SUBSECTION (2).

16 (5) THIS SECTION APPLIES TO AMENDMENTS AND CANCELLATIONS OF
17 PAYMENT ORDERS TO THE SAME EXTENT IT APPLIES TO PAYMENT ORDERS.

18 (6) EXCEPT AS PROVIDED IN THIS SECTION AND IN
19 SECTION 4A203(1)(A), RIGHTS AND OBLIGATIONS ARISING UNDER THIS
20 SECTION OR SECTION 4A203 MAY NOT BE VARIED BY AGREEMENT.

21 SEC. 4A203. (1) IF AN ACCEPTED PAYMENT ORDER IS NOT, UNDER
22 SECTION 4A202(1), AN AUTHORIZED ORDER OF A CUSTOMER IDENTIFIED AS
23 SENDER, BUT IS EFFECTIVE AS AN ORDER OF THE CUSTOMER PURSUANT TO
24 SECTION 4A202(2), THE FOLLOWING RULES APPLY:

25 (A) BY EXPRESS WRITTEN AGREEMENT, THE RECEIVING BANK MAY
26 LIMIT THE EXTENT TO WHICH IT IS ENTITLED TO ENFORCE OR RETAIN
27 PAYMENT OF THE PAYMENT ORDER.

1 (B) THE RECEIVING BANK IS NOT ENTITLED TO ENFORCE OR RETAIN
2 PAYMENT OF THE PAYMENT ORDER IF THE CUSTOMER PROVES THAT THE
3 ORDER WAS NOT CAUSED, DIRECTLY OR INDIRECTLY, BY A PERSON (i)
4 ENTRUSTED AT ANYTIME WITH DUTIES TO ACT FOR THE CUSTOMER WITH
5 RESPECT TO PAYMENT ORDERS OR THE SECURITY PROCEDURE, OR (ii) WHO
6 OBTAINED ACCESS TO TRANSMITTING FACILITIES OF THE CUSTOMER OR WHO
7 OBTAINED, FROM A SOURCE CONTROLLED BY THE CUSTOMER AND WITHOUT
8 AUTHORITY OF THE RECEIVING BANK, INFORMATION FACILITATING BREACH
9 OF THE SECURITY PROCEDURE, REGARDLESS OF HOW THE INFORMATION WAS
10 OBTAINED OR WHETHER THE CUSTOMER WAS AT FAULT. INFORMATION
11 INCLUDES ANY ACCESS DEVICE, COMPUTER SOFTWARE, OR THE LIKE.

12 (2) THIS SECTION APPLIES TO AMENDMENTS OF PAYMENT ORDERS TO
13 THE SAME EXTENT IT APPLIES TO PAYMENT ORDERS.

14 SEC. 4A204. (1) IF A RECEIVING BANK ACCEPTS A PAYMENT ORDER
15 ISSUED IN THE NAME OF ITS CUSTOMER AS SENDER WHICH IS (i) NOT
16 AUTHORIZED AND NOT EFFECTIVE AS THE ORDER OF THE CUSTOMER UNDER
17 SECTION 4A202, OR (ii) NOT ENFORCEABLE, IN WHOLE OR IN PART,
18 AGAINST THE CUSTOMER UNDER SECTION 4A203, THE BANK SHALL REFUND
19 ANY PAYMENT OF THE PAYMENT ORDER RECEIVED FROM THE CUSTOMER TO
20 THE EXTENT THE BANK IS NOT ENTITLED TO ENFORCE PAYMENT AND SHALL
21 PAY INTEREST ON THE REFUNDABLE AMOUNT CALCULATED FROM THE DATE
22 THE BANK RECEIVED PAYMENT TO THE DATE OF THE REFUND. HOWEVER,
23 THE CUSTOMER IS NOT ENTITLED TO INTEREST FROM THE BANK ON THE
24 AMOUNT TO BE REFUNDED IF THE CUSTOMER FAILS TO EXERCISE ORDINARY
25 CARE TO DETERMINE THAT THE ORDER WAS NOT AUTHORIZED BY THE CUS-
26 TOMER AND TO NOTIFY THE BANK OF THE RELEVANT FACTS WITHIN A
27 REASONABLE TIME NOT EXCEEDING 90 DAYS AFTER THE DATE THE CUSTOMER

1 RECEIVED NOTIFICATION FROM THE BANK THAT THE ORDER WAS ACCEPTED
2 OR THAT THE CUSTOMER'S ACCOUNT WAS DEBITED WITH RESPECT TO THE
3 ORDER. THE BANK IS NOT ENTITLED TO ANY RECOVERY FROM THE CUS-
4 TOMER ON ACCOUNT OF A FAILURE BY THE CUSTOMER TO GIVE NOTIFICA-
5 TION AS STATED IN THIS SECTION.

6 (2) REASONABLE TIME UNDER SUBSECTION (1) MAY BE FIXED BY
7 AGREEMENT AS STATED IN SECTION 1204(1), BUT THE OBLIGATION OF A
8 RECEIVING BANK TO REFUND PAYMENT AS STATED IN SUBSECTION (1) MAY
9 NOT OTHERWISE BE VARIED BY AGREEMENT.

10 SEC. 4A205. (1) IF AN ACCEPTED PAYMENT ORDER WAS TRANSMIT-
11 TED PURSUANT TO A SECURITY PROCEDURE FOR THE DETECTION OF ERROR
12 AND THE PAYMENT ORDER (i) ERRONEOUSLY INSTRUCTED PAYMENT TO A
13 BENEFICIARY NOT INTENDED BY THE SENDER, (ii) ERRONEOUSLY
14 INSTRUCTED PAYMENT IN AN AMOUNT GREATER THAN THE AMOUNT INTENDED
15 BY THE SENDER, OR (iii) WAS AN ERRONEOUSLY TRANSMITTED DUPLICATE
16 OF A PAYMENT ORDER PREVIOUSLY SENT BY THE SENDER, THE FOLLOWING
17 RULES APPLY:

18 (A) IF THE SENDER PROVES THAT THE SENDER OR A PERSON ACTING
19 ON BEHALF OF THE SENDER PURSUANT TO SECTION 4A206 COMPLIED WITH
20 THE SECURITY PROCEDURE AND THAT THE ERROR WOULD HAVE BEEN
21 DETECTED IF THE RECEIVING BANK HAD ALSO COMPLIED, THE SENDER IS
22 NOT OBLIGED TO PAY THE ORDER TO THE EXTENT STATED IN
23 SUBDIVISIONS (B) AND (C).

24 (B) IF THE FUNDS TRANSFER IS COMPLETED ON THE BASIS OF AN
25 ERRONEOUS PAYMENT ORDER DESCRIBED IN SUBSECTION (1)(i) OR (iii),
26 THE SENDER IS NOT OBLIGED TO PAY THE ORDER AND THE RECEIVING BANK
27 IS ENTITLED TO RECOVER FROM THE BENEFICIARY ANY AMOUNT PAID TO

1 THE BENEFICIARY TO THE EXTENT ALLOWED BY THE LAW GOVERNING
2 MISTAKE AND RESTITUTION.

3 (C) IF THE FUNDS TRANSFER IS COMPLETED ON THE BASIS OF A
4 PAYMENT ORDER DESCRIBED IN SUBSECTION (1)(ii) OF, THE SENDER IS
5 NOT OBLIGED TO PAY THE ORDER TO THE EXTENT THE AMOUNT RECEIVED BY
6 THE BENEFICIARY IS GREATER THAN THE AMOUNT INTENDED BY THE
7 SENDER. IN THAT CASE, THE RECEIVING BANK IS ENTITLED TO RECOVER
8 FROM THE BENEFICIARY THE EXCESS AMOUNT RECEIVED TO THE EXTENT
9 ALLOWED BY THE LAW GOVERNING MISTAKE AND RESTITUTION.

10 (2) IF (i) THE SENDER OF AN ERRONEOUS PAYMENT ORDER
11 DESCRIBED IN SUBSECTION (1) IS NOT OBLIGED TO PAY ALL OR PART OF
12 THE ORDER, AND (ii) THE SENDER RECEIVES NOTIFICATION FROM THE
13 RECEIVING BANK THAT THE ORDER WAS ACCEPTED BY THE BANK OR THAT
14 THE SENDER'S ACCOUNT WAS DEBITED WITH RESPECT TO THE ORDER, THE
15 SENDER HAS A DUTY TO EXERCISE ORDINARY CARE, ON THE BASIS OF
16 INFORMATION AVAILABLE TO THE SENDER, TO DISCOVER THE ERROR WITH
17 RESPECT TO THE ORDER AND TO ADVISE THE BANK OF THE RELEVANT FACTS
18 WITHIN A REASONABLE TIME, NOT EXCEEDING 90 DAYS, AFTER THE BANK'S
19 NOTIFICATION WAS RECEIVED BY THE SENDER. IF THE BANK PROVES THAT
20 THE SENDER FAILED TO PERFORM THAT DUTY, THE SENDER IS LIABLE TO
21 THE BANK FOR THE LOSS THE BANK PROVES IT INCURRED AS A RESULT OF
22 THE FAILURE, BUT THE LIABILITY OF THE SENDER MAY NOT EXCEED THE
23 AMOUNT OF THE SENDER'S ORDER.

24 (3) THIS SECTION APPLIES TO AMENDMENTS TO PAYMENT ORDERS TO
25 THE SAME EXTENT IT APPLIES TO PAYMENT ORDERS.

26 SEC. 4A206. (1) IF A PAYMENT ORDER ADDRESSED TO A RECEIVING
27 BANK IS TRANSMITTED TO A FUNDS-TRANSFER SYSTEM OR OTHER

1 THIRD-PARTY COMMUNICATION SYSTEM FOR TRANSMITTAL TO THE BANK, THE
2 SYSTEM IS DEEMED TO BE AN AGENT OF THE SENDER FOR THE PURPOSE OF
3 TRANSMITTING THE PAYMENT ORDER TO THE BANK. IF THERE IS A DIS-
4 CREPANCY BETWEEN THE TERMS OF THE PAYMENT ORDER TRANSMITTED TO
5 THE SYSTEM AND THE TERMS OF THE PAYMENT ORDER TRANSMITTED BY THE
6 SYSTEM TO THE BANK, THE TERMS OF THE PAYMENT ORDER OF THE SENDER
7 ARE THOSE TRANSMITTED BY THE SYSTEM. THIS SECTION DOES NOT APPLY
8 TO A FUNDS-TRANSFER SYSTEM OF THE FEDERAL RESERVE BANKS.

9 (2) THIS SECTION APPLIES TO CANCELLATIONS AND AMENDMENTS OF
10 PAYMENT ORDERS TO THE SAME EXTENT IT APPLIES TO PAYMENT ORDERS.

11 SEC. 4A207. (1) SUBJECT TO SUBSECTION (2), IF, IN A PAYMENT
12 ORDER RECEIVED BY THE BENEFICIARY'S BANK, THE NAME, BANK ACCOUNT
13 NUMBER, OR OTHER IDENTIFICATION OF THE BENEFICIARY REFERS TO A
14 NONEXISTENT OR UNIDENTIFIABLE PERSON OR ACCOUNT, NO PERSON HAS
15 RIGHTS AS A BENEFICIARY OF THE ORDER AND ACCEPTANCE OF THE ORDER
16 CANNOT OCCUR.

17 (2) IF A PAYMENT ORDER RECEIVED BY THE BENEFICIARY'S BANK
18 IDENTIFIES THE BENEFICIARY BOTH BY NAME AND BY AN IDENTIFYING OR
19 BANK ACCOUNT NUMBER AND THE NAME AND NUMBER IDENTIFY DIFFERENT
20 PERSONS, THE FOLLOWING RULES APPLY:

21 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), IF THE
22 BENEFICIARY'S BANK DOES NOT KNOW THAT THE NAME AND NUMBER REFER
23 TO DIFFERENT PERSONS, IT MAY RELY ON THE NUMBER AS THE PROPER
24 IDENTIFICATION OF THE BENEFICIARY OF THE ORDER. THE
25 BENEFICIARY'S BANK NEED NOT DETERMINE WHETHER THE NAME AND NUMBER
26 REFER TO THE SAME PERSON.

1 (B) IF THE BENEFICIARY'S BANK PAYS THE PERSON IDENTIFIED BY
2 NAME OR KNOWS THAT THE NAME AND NUMBER IDENTIFY DIFFERENT
3 PERSONS, NO PERSON HAS RIGHTS AS BENEFICIARY EXCEPT THE PERSON
4 PAID BY THE BENEFICIARY'S BANK IF THAT PERSON WAS ENTITLED TO
5 RECEIVE PAYMENT FROM THE ORIGINATOR OF THE FUNDS TRANSFER. IF NO
6 PERSON HAS RIGHTS AS BENEFICIARY, ACCEPTANCE OF THE ORDER CANNOT
7 OCCUR.

8 (3) IF (i) A PAYMENT ORDER DESCRIBED IN SUBSECTION (2) IS
9 ACCEPTED, (ii) THE ORIGINATOR'S PAYMENT ORDER DESCRIBED THE BENE-
10 FICIARY INCONSISTENTLY BY NAME AND NUMBER, AND (iii) THE
11 BENEFICIARY'S BANK PAYS THE PERSON IDENTIFIED BY NUMBER AS PER-
12 MITTED BY SUBSECTION (2)(A), THE FOLLOWING RULES APPLY:

13 (A) IF THE ORIGINATOR IS A BANK, THE ORIGINATOR IS OBLIGED
14 TO PAY ITS ORDER.

15 (B) IF THE ORIGINATOR IS NOT A BANK AND PROVES THAT THE
16 PERSON IDENTIFIED BY NUMBER WAS NOT ENTITLED TO RECEIVE PAYMENT
17 FROM THE ORIGINATOR, THE ORIGINATOR IS NOT OBLIGED TO PAY ITS
18 ORDER UNLESS THE ORIGINATOR'S BANK PROVES THAT THE ORIGINATOR,
19 BEFORE ACCEPTANCE OF THE ORIGINATOR'S ORDER, HAD NOTICE THAT PAY-
20 MENT OF A PAYMENT ORDER ISSUED BY THE ORIGINATOR MIGHT BE MADE BY
21 THE BENEFICIARY'S BANK ON THE BASIS OF AN IDENTIFYING OR BANK
22 ACCOUNT NUMBER EVEN IF IT IDENTIFIES A PERSON DIFFERENT FROM THE
23 NAMED BENEFICIARY. PROOF OF NOTICE MAY BE MADE BY ANY ADMISSIBLE
24 EVIDENCE. THE ORIGINATOR'S BANK SATISFIES THE BURDEN OF PROOF IF
25 IT PROVES THAT THE ORIGINATOR, BEFORE THE PAYMENT ORDER WAS
26 ACCEPTED, SIGNED A WRITING STATING THE INFORMATION TO WHICH THE
27 NOTICE RELATES.

1 (4) IN A CASE GOVERNED BY SUBSECTION (2)(A), IF THE
2 BENEFICIARY'S BANK RIGHTFULLY PAYS THE PERSON IDENTIFIED BY
3 NUMBER AND THAT PERSON WAS NOT ENTITLED TO RECEIVE PAYMENT FROM
4 THE ORIGINATOR, THE AMOUNT PAID MAY BE RECOVERED FROM THAT PERSON
5 TO THE EXTENT ALLOWED BY THE LAW GOVERNING MISTAKE AND RESTITU-
6 TION AS FOLLOWS:

7 (A) IF THE ORIGINATOR IS OBLIGED TO PAY ITS PAYMENT ORDER AS
8 STATED IN SUBSECTION (3), THE ORIGINATOR HAS THE RIGHT TO
9 RECOVER.

10 (B) IF THE ORIGINATOR IS NOT A BANK AND IS NOT OBLIGED TO
11 PAY ITS PAYMENT ORDER, THE ORIGINATOR'S BANK HAS THE RIGHT TO
12 RECOVER.

13 SEC. 4A208. (1) THE FOLLOWING RULES APPLY TO A PAYMENT
14 ORDER IDENTIFYING AN INTERMEDIARY BANK OR THE BENEFICIARY'S BANK
15 ONLY BY AN IDENTIFYING NUMBER:

16 (A) THE RECEIVING BANK MAY RELY ON THE NUMBER AS THE PROPER
17 IDENTIFICATION OF THE INTERMEDIARY OR BENEFICIARY'S BANK AND NEED
18 NOT DETERMINE WHETHER THE NUMBER IDENTIFIES A BANK.

19 (B) THE SENDER IS OBLIGED TO COMPENSATE THE RECEIVING BANK
20 FOR ANY LOSS AND EXPENSES INCURRED BY THE RECEIVING BANK AS A
21 RESULT OF ITS RELIANCE ON THE NUMBER IN EXECUTING OR ATTEMPTING
22 TO EXECUTE THE ORDER.

23 (2) THE FOLLOWING RULES APPLY TO A PAYMENT ORDER IDENTIFYING
24 AN INTERMEDIARY BANK OR THE BENEFICIARY'S BANK BOTH BY NAME AND
25 AN IDENTIFYING NUMBER IF THE NAME AND NUMBER IDENTIFY DIFFERENT
26 PERSONS.

1 (A) IF THE SENDER IS A BANK, THE RECEIVING BANK MAY RELY ON
2 THE NUMBER AS THE PROPER IDENTIFICATION OF THE INTERMEDIARY OR
3 BENEFICIARY'S BANK IF THE RECEIVING BANK, WHEN IT EXECUTES THE
4 SENDER'S ORDER, DOES NOT KNOW THAT THE NAME AND NUMBER IDENTIFY
5 DIFFERENT PERSONS. THE RECEIVING BANK NEED NOT DETERMINE WHETHER
6 THE NAME AND NUMBER REFER TO THE SAME PERSON OR WHETHER THE
7 NUMBER REFERS TO A BANK. THE SENDER IS OBLIGED TO COMPENSATE THE
8 RECEIVING BANK FOR ANY LOSS AND EXPENSES INCURRED BY THE RECEIV-
9 ING BANK AS A RESULT OF ITS RELIANCE ON THE NUMBER IN EXECUTING
10 OR ATTEMPTING TO EXECUTE THE ORDER.

11 (B) IF THE SENDER IS NOT A BANK AND THE RECEIVING BANK
12 PROVES THAT THE SENDER, BEFORE THE PAYMENT ORDER WAS ACCEPTED,
13 HAD NOTICE THAT THE RECEIVING BANK MIGHT RELY ON THE NUMBER AS
14 THE PROPER IDENTIFICATION OF THE INTERMEDIARY OR BENEFICIARY'S
15 BANK EVEN IF IT IDENTIFIES A PERSON DIFFERENT FROM THE BANK IDEN-
16 TIFIED BY NAME, THE RIGHTS AND OBLIGATIONS OF THE SENDER AND THE
17 RECEIVING BANK ARE GOVERNED BY SUBSECTION (2)(A), AS THOUGH THE
18 SENDER WERE A BANK. PROOF OF NOTICE MAY BE MADE BY ANY ADMISSI-
19 BLE EVIDENCE. THE RECEIVING BANK SATISFIES THE BURDEN OF PROOF
20 IF IT PROVES THAT THE SENDER, BEFORE THE PAYMENT ORDER WAS
21 ACCEPTED, SIGNED A WRITING STATING THE INFORMATION TO WHICH THE
22 NOTICE RELATES.

23 (C) REGARDLESS OF WHETHER THE SENDER IS A BANK, THE RECEIV-
24 ING BANK MAY RELY ON THE NAME AS THE PROPER IDENTIFICATION OF THE
25 INTERMEDIARY OR BENEFICIARY'S BANK IF THE RECEIVING BANK, AT THE
26 TIME IT EXECUTES THE SENDER'S ORDER, DOES NOT KNOW THAT THE NAME
27 AND NUMBER IDENTIFY DIFFERENT PERSONS. THE RECEIVING BANK NEED

1 NOT DETERMINE WHETHER THE NAME AND NUMBER REFER TO THE SAME
2 PERSON.

3 (D) IF THE RECEIVING BANK KNOWS THAT THE NAME AND NUMBER
4 IDENTIFY DIFFERENT PERSONS, RELIANCE ON EITHER THE NAME OR THE
5 NUMBER IN EXECUTING THE SENDER'S PAYMENT ORDER IS A BREACH OF THE
6 OBLIGATION STATED IN SECTION 4A302(1)(A).

7 SEC. 4A209. (1) SUBJECT TO SUBSECTION (4), A RECEIVING BANK
8 OTHER THAN THE BENEFICIARY'S BANK ACCEPTS A PAYMENT ORDER WHEN IT
9 EXECUTES THE ORDER.

10 (2) SUBJECT TO SUBSECTIONS (3) AND (4), A BENEFICIARY'S BANK
11 ACCEPTS A PAYMENT ORDER AT THE EARLIEST OF THE FOLLOWING TIMES:

12 (A) WHEN THE BANK PAYS THE BENEFICIARY AS STATED IN SECTION
13 4A405(1) OR (2), OR NOTIFIES THE BENEFICIARY OF RECEIPT OF THE
14 ORDER OR THAT THE ACCOUNT OF THE BENEFICIARY HAS BEEN CREDITED
15 WITH RESPECT TO THE ORDER UNLESS THE NOTICE INDICATES THAT THE
16 BANK IS REJECTING THE ORDER OR THAT FUNDS WITH RESPECT TO THE
17 ORDER MAY NOT BE WITHDRAWN OR USED UNTIL RECEIPT OF PAYMENT FROM
18 THE SENDER OF THE ORDER.

19 (B) WHEN THE BANK RECEIVES PAYMENT OF THE ENTIRE AMOUNT OF
20 THE SENDER'S ORDER PURSUANT TO SECTION 4A403(1)(A) OR (B).

21 (C) THE OPENING OF THE NEXT FUNDS-TRANSFER BUSINESS DAY OF
22 THE BANK FOLLOWING THE PAYMENT DATE OF THE ORDER IF, AT THAT
23 TIME, THE AMOUNT OF THE SENDER'S ORDER IS FULLY COVERED BY A
24 WITHDRAWABLE CREDIT BALANCE IN AN AUTHORIZED ACCOUNT OF THE
25 SENDER OR THE BANK HAS OTHERWISE RECEIVED FULL PAYMENT FROM THE
26 SENDER, UNLESS THE ORDER WAS REJECTED BEFORE THAT TIME OR IS
27 REJECTED WITHIN 1 HOUR AFTER THAT TIME, OR 1 HOUR AFTER THE

1 OPENING OF THE NEXT BUSINESS DAY OF THE SENDER FOLLOWING THE
2 PAYMENT DATE IF THAT TIME IS LATER. IF NOTICE OF REJECTION IS
3 RECEIVED BY THE SENDER AFTER THE PAYMENT DATE AND THE AUTHORIZED
4 ACCOUNT OF THE SENDER DOES NOT BEAR INTEREST, THE BANK IS OBLIGED
5 TO PAY INTEREST TO THE SENDER ON THE AMOUNT OF THE ORDER FOR THE
6 NUMBER OF DAYS ELAPSING AFTER THE PAYMENT DATE TO THE DAY THE
7 SENDER RECEIVES NOTICE OR LEARNS THAT THE ORDER WAS NOT ACCEPTED,
8 COUNTING THAT DAY AS AN ELAPSED DAY. IF THE WITHDRAWABLE CREDIT
9 BALANCE DURING THAT PERIOD FALLS BELOW THE AMOUNT OF THE ORDER,
10 THE AMOUNT OF INTEREST PAYABLE IS REDUCED ACCORDINGLY.

11 (3) ACCEPTANCE OF A PAYMENT ORDER CANNOT OCCUR BEFORE THE
12 ORDER IS RECEIVED BY THE RECEIVING BANK. ACCEPTANCE DOES NOT
13 OCCUR UNDER SUBSECTION (2)(B) OR (C) IF THE BENEFICIARY OF THE
14 PAYMENT ORDER DOES NOT HAVE AN ACCOUNT WITH THE RECEIVING BANK,
15 THE ACCOUNT HAS BEEN CLOSED, OR THE RECEIVING BANK IS NOT PERMIT-
16 TED BY LAW TO RECEIVE CREDITS FOR THE BENEFICIARY'S ACCOUNT.

17 (4) A PAYMENT ORDER ISSUED TO THE ORIGINATOR'S BANK CANNOT
18 BE ACCEPTED UNTIL THE PAYMENT DATE IF THE BANK IS THE
19 BENEFICIARY'S BANK, OR THE EXECUTION DATE IF THE BANK IS NOT THE
20 BENEFICIARY'S BANK. IF THE ORIGINATOR'S BANK EXECUTES THE
21 ORIGINATOR'S PAYMENT ORDER BEFORE THE EXECUTION DATE OR PAYS THE
22 BENEFICIARY OF THE ORIGINATOR'S PAYMENT ORDER BEFORE THE PAYMENT
23 DATE AND THE PAYMENT ORDER IS SUBSEQUENTLY CANCELED PURSUANT TO
24 SECTION 4A211(2), THE BANK MAY RECOVER FROM THE BENEFICIARY ANY
25 PAYMENT RECEIVED TO THE EXTENT ALLOWED BY THE LAW GOVERNING MIS-
26 TAKE AND RESTITUTION.

1 SEC. 4A210. (1) A PAYMENT ORDER IS REJECTED BY THE
2 RECEIVING BANK BY A NOTICE OF REJECTION TRANSMITTED TO THE SENDER
3 ORALLY, ELECTRONICALLY, OR IN WRITING. A NOTICE OF REJECTION
4 NEED NOT USE ANY PARTICULAR WORDS AND IS SUFFICIENT IF IT INDI-
5 CATES THAT THE RECEIVING BANK IS REJECTING THE ORDER OR WILL NOT
6 EXECUTE OR PAY THE ORDER. REJECTION IS EFFECTIVE WHEN THE NOTICE
7 IS GIVEN IF TRANSMISSION IS BY A MEANS THAT IS REASONABLE IN THE
8 CIRCUMSTANCES. IF NOTICE OF REJECTION IS GIVEN BY A MEANS THAT
9 IS NOT REASONABLE, REJECTION IS EFFECTIVE WHEN THE NOTICE IS
10 RECEIVED. IF AN AGREEMENT OF THE SENDER AND RECEIVING BANK
11 ESTABLISHES THE MEANS TO BE USED TO REJECT A PAYMENT ORDER, ANY
12 MEANS COMPLYING WITH THE AGREEMENT IS REASONABLE AND ANY MEANS
13 NOT COMPLYING IS NOT REASONABLE UNLESS NO SIGNIFICANT DELAY IN
14 RECEIPT OF THE NOTICE RESULTED FROM THE USE OF THE NONCOMPLYING
15 MEANS.

16 (2) THIS SUBSECTION APPLIES IF A RECEIVING BANK OTHER THAN
17 THE BENEFICIARY'S BANK FAILS TO EXECUTE A PAYMENT ORDER DESPITE
18 THE EXISTENCE ON THE EXECUTION DATE OF A WITHDRAWABLE CREDIT BAL-
19 ANCE IN AN AUTHORIZED ACCOUNT OF THE SENDER SUFFICIENT TO COVER
20 THE ORDER. IF THE SENDER DOES NOT RECEIVE NOTICE OF REJECTION OF
21 THE ORDER ON THE EXECUTION DATE AND THE AUTHORIZED ACCOUNT OF THE
22 SENDER DOES NOT BEAR INTEREST, THE BANK IS OBLIGED TO PAY INTER-
23 EST TO THE SENDER ON THE AMOUNT OF THE ORDER FOR THE NUMBER OF
24 DAYS ELAPSING AFTER THE EXECUTION DATE TO THE EARLIER OF THE DAY
25 THE ORDER IS CANCELED PURSUANT TO SECTION 4A211(4) OR THE DAY THE
26 SENDER RECEIVES NOTICE OR LEARNS THAT THE ORDER WAS NOT EXECUTED,
27 COUNTING THE FINAL DAY OF THE PERIOD AS AN ELAPSED DAY. IF THE

1 WITHDRAWABLE CREDIT BALANCE DURING THAT PERIOD FALLS BELOW THE
2 AMOUNT OF THE ORDER, THE AMOUNT OF INTEREST IS REDUCED
3 ACCORDINGLY.

4 (3) IF A RECEIVING BANK SUSPENDS PAYMENTS, ALL UNACCEPTED
5 PAYMENT ORDERS ISSUED TO IT ARE DEEMED REJECTED AT THE TIME THE
6 BANK SUSPENDS PAYMENTS.

7 (4) ACCEPTANCE OF A PAYMENT ORDER PRECLUDES A LATER REJEC-
8 TION OF THE ORDER. REJECTION OF A PAYMENT ORDER PRECLUDES A
9 LATER ACCEPTANCE OF THE ORDER.

10 SEC. 4A211. (1) A COMMUNICATION OF THE SENDER OF A PAYMENT
11 ORDER CANCELING OR AMENDING THE ORDER MAY BE TRANSMITTED TO THE
12 RECEIVING BANK ORALLY, ELECTRONICALLY, OR IN WRITING. IF A
13 SECURITY PROCEDURE IS IN EFFECT BETWEEN THE SENDER AND THE
14 RECEIVING BANK, THE COMMUNICATION IS NOT EFFECTIVE TO CANCEL OR
15 AMEND THE ORDER UNLESS THE COMMUNICATION IS VERIFIED PURSUANT TO
16 THE SECURITY PROCEDURE OR THE BANK AGREES TO THE CANCELLATION OR
17 AMENDMENT.

18 (2) SUBJECT TO SUBSECTION (1), A COMMUNICATION BY THE SENDER
19 CANCELING OR AMENDING A PAYMENT ORDER IS EFFECTIVE TO CANCEL OR
20 AMEND THE ORDER IF NOTICE OF THE COMMUNICATION IS RECEIVED AT A
21 TIME AND IN A MANNER AFFORDING THE RECEIVING BANK A REASONABLE
22 OPPORTUNITY TO ACT ON THE COMMUNICATION BEFORE THE BANK ACCEPTS
23 THE PAYMENT ORDER.

24 (3) AFTER A PAYMENT ORDER HAS BEEN ACCEPTED, CANCELLATION,
25 OR AMENDMENT OF THE ORDER IS NOT EFFECTIVE UNLESS THE RECEIVING
26 BANK AGREES OR A FUNDS-TRANSFER SYSTEM RULE ALLOWS CANCELLATION

1 OR AMENDMENT WITHOUT AGREEMENT OF THE BANK. WITH RESPECT TO A
2 PAYMENT ORDER, THE FOLLOWING RULES APPLY:

3 (A) A PAYMENT ORDER ACCEPTED BY A RECEIVING BANK OTHER THAN
4 THE BENEFICIARY'S BANK, CANCELLATION, OR AMENDMENT IS NOT EFFEC-
5 TIVE UNLESS A CONFORMING CANCELLATION OR AMENDMENT OF THE PAYMENT
6 ORDER ISSUED BY THE RECEIVING BANK IS ALSO MADE.

7 (B) A PAYMENT ORDER ACCEPTED BY THE BENEFICIARY'S BANK, CAN-
8 CELLATION, OR AMENDMENT IS NOT EFFECTIVE UNLESS THE ORDER WAS
9 ISSUED IN EXECUTION OF AN UNAUTHORIZED PAYMENT ORDER, OR BECAUSE
10 OF A MISTAKE BY A SENDER IN THE FUNDS TRANSFER WHICH RESULTED IN
11 THE ISSUANCE OF A PAYMENT ORDER THAT IS A DUPLICATE OF A PAYMENT
12 ORDER PREVIOUSLY ISSUED BY THE SENDER, THAT ORDERS PAYMENT TO A
13 BENEFICIARY NOT ENTITLED TO RECEIVE PAYMENT FROM THE ORIGINATOR,
14 OR THAT ORDERS PAYMENT IN AN AMOUNT GREATER THAN THE AMOUNT THE
15 BENEFICIARY WAS ENTITLED TO RECEIVE FROM THE ORIGINATOR. IF THE
16 PAYMENT ORDER IS CANCELED OR AMENDED, THE BENEFICIARY'S BANK IS
17 ENTITLED TO RECOVER FROM THE BENEFICIARY ANY AMOUNT PAID TO THE
18 BENEFICIARY TO THE EXTENT ALLOWED BY THE LAW GOVERNING MISTAKE
19 AND RESTITUTION.

20 (4) AN UNACCEPTED PAYMENT ORDER IS CANCELED BY OPERATION OF
21 LAW AT THE CLOSE OF THE FIFTH FUNDS-TRANSFER BUSINESS DAY OF THE
22 RECEIVING BANK AFTER THE EXECUTION DATE OR PAYMENT DATE OF THE
23 ORDER.

24 (5) A CANCELED PAYMENT ORDER CANNOT BE ACCEPTED. IF AN
25 ACCEPTED PAYMENT ORDER IS CANCELED, THE ACCEPTANCE IS NULLIFIED
26 AND NO PERSON HAS ANY RIGHT OR OBLIGATION BASED ON THE
27 ACCEPTANCE. AMENDMENT OF A PAYMENT ORDER IS DEEMED TO BE

1 CANCELLATION OF THE ORIGINAL ORDER AT THE TIME OF AMENDMENT AND
2 ISSUE OF A NEW PAYMENT ORDER IN THE AMENDED FORM AT THE SAME
3 TIME.

4 (6) UNLESS OTHERWISE PROVIDED IN AN AGREEMENT OF THE PARTIES
5 OR IN A FUNDS-TRANSFER SYSTEM RULE, IF THE RECEIVING BANK, AFTER
6 ACCEPTING A PAYMENT ORDER, AGREES TO CANCELLATION OR AMENDMENT OF
7 THE ORDER BY THE SENDER OR IS BOUND BY A FUNDS-TRANSFER SYSTEM
8 RULE ALLOWING CANCELLATION OR AMENDMENT WITHOUT THE BANK'S AGREE-
9 MENT, THE SENDER, WHETHER OR NOT CANCELLATION OR AMENDMENT IS
10 EFFECTIVE, IS LIABLE TO THE BANK FOR ANY LOSS AND EXPENSES,
11 INCLUDING REASONABLE ATTORNEY'S FEES, INCURRED BY THE BANK AS A
12 RESULT OF THE CANCELLATION OR AMENDMENT OR ATTEMPTED CANCELLATION
13 OR AMENDMENT.

14 (7) A PAYMENT ORDER IS NOT REVOKED BY THE DEATH OR LEGAL
15 INCAPACITY OF THE SENDER UNLESS THE RECEIVING BANK KNOWS OF THE
16 DEATH OR OF AN ADJUDICATION OF INCAPACITY BY A COURT OF COMPETENT
17 JURISDICTION AND HAS REASONABLE OPPORTUNITY TO ACT BEFORE ACCEP-
18 TANCE OF THE ORDER.

19 (8) A FUNDS-TRANSFER SYSTEM RULE IS NOT EFFECTIVE TO THE
20 EXTENT IT CONFLICTS WITH SUBSECTION (3)(B).

21 SEC. 4A212. IF A RECEIVING BANK FAILS TO ACCEPT A PAYMENT
22 ORDER THAT IT IS OBLIGED BY EXPRESS AGREEMENT TO ACCEPT, THE BANK
23 IS LIABLE FOR BREACH OF THE AGREEMENT TO THE EXTENT PROVIDED IN
24 THE AGREEMENT OR IN THIS ARTICLE, BUT DOES NOT OTHERWISE HAVE ANY
25 DUTY TO ACCEPT A PAYMENT ORDER OR, BEFORE ACCEPTANCE, TO TAKE ANY
26 ACTION, OR REFRAIN FROM TAKING ACTION, WITH RESPECT TO THE ORDER
27 EXCEPT AS PROVIDED IN THIS ARTICLE OR BY EXPRESS AGREEMENT.

1 LIABILITY BASED ON ACCEPTANCE ARISES ONLY WHEN ACCEPTANCE OCCURS
2 AS STATED IN SECTION 4A209, AND LIABILITY IS LIMITED TO THAT PRO-
3 VIDED IN THIS ARTICLE. A RECEIVING BANK IS NOT THE AGENT OF THE
4 SENDER OR BENEFICIARY OF THE PAYMENT ORDER IT ACCEPTS, OR OF ANY
5 OTHER PARTY TO THE FUNDS TRANSFER, AND THE BANK OWES NO DUTY TO
6 ANY PARTY TO THE FUNDS TRANSFER EXCEPT AS PROVIDED IN THIS ARTI-
7 CLE OR BY EXPRESS AGREEMENT.

8 PART 3. EXECUTION OF SENDER'S PAYMENT ORDER BY RECEIVING BANK
9 SEC. 4A301. (1) A PAYMENT ORDER IS "EXECUTED" BY THE
10 RECEIVING BANK WHEN IT ISSUES A PAYMENT ORDER INTENDED TO CARRY
11 OUT THE PAYMENT ORDER RECEIVED BY THE BANK. A PAYMENT ORDER
12 RECEIVED BY THE BENEFICIARY'S BANK CAN BE ACCEPTED BUT CANNOT BE
13 EXECUTED.

14 (2) "EXECUTION DATE" OF A PAYMENT ORDER MEANS THE DAY ON
15 WHICH THE RECEIVING BANK MAY PROPERLY ISSUE A PAYMENT ORDER IN
16 EXECUTION OF THE SENDER'S ORDER. THE EXECUTION DATE MAY BE
17 DETERMINED BY INSTRUCTION OF THE SENDER BUT CANNOT BE EARLIER
18 THAN THE DAY THE ORDER IS RECEIVED AND, UNLESS OTHERWISE DETER-
19 MINED, IS THE DAY THE ORDER IS RECEIVED. IF THE SENDER'S
20 INSTRUCTION STATES A PAYMENT DATE, THE EXECUTION DATE IS THE PAY-
21 MENT DATE OR AN EARLIER DATE ON WHICH EXECUTION IS REASONABLY
22 NECESSARY TO ALLOW PAYMENT TO THE BENEFICIARY ON THE PAYMENT
23 DATE.

24 SEC. 4A302. (1) EXCEPT AS PROVIDED IN SUBSECTIONS (2)
25 THROUGH (4), IF THE RECEIVING BANK ACCEPTS A PAYMENT ORDER PURSU-
26 ANT TO SECTION 4A209(1), THE BANK HAS THE FOLLOWING OBLIGATIONS
27 IN EXECUTING THE ORDER:

1 (A) THE RECEIVING BANK IS OBLIGED TO ISSUE, ON THE EXECUTION
2 DATE, A PAYMENT ORDER COMPLYING WITH THE SENDER'S ORDER AND TO
3 FOLLOW THE SENDER'S INSTRUCTIONS CONCERNING ANY INTERMEDIARY BANK
4 OR FUNDS-TRANSFER SYSTEM TO BE USED IN CARRYING OUT THE FUNDS
5 TRANSFER, OR THE MEANS BY WHICH PAYMENT ORDERS ARE TO BE TRANS-
6 MITTED IN THE FUNDS TRANSFER. IF THE ORIGINATOR'S BANK ISSUES A
7 PAYMENT ORDER TO AN INTERMEDIARY BANK, THE ORIGINATOR'S BANK IS
8 OBLIGED TO INSTRUCT THE INTERMEDIARY BANK ACCORDING TO THE
9 INSTRUCTION OF THE ORIGINATOR. AN INTERMEDIARY BANK IN THE FUNDS
10 TRANSFER IS SIMILARLY BOUND BY AN INSTRUCTION GIVEN TO IT BY THE
11 SENDER OF THE PAYMENT ORDER IT ACCEPTS.

12 (B) IF THE SENDER'S INSTRUCTION STATES THAT THE FUNDS TRANS-
13 FER IS TO BE CARRIED OUT TELEPHONICALLY OR BY WIRE TRANSFER OR
14 OTHERWISE INDICATES THAT THE FUNDS TRANSFER IS TO BE CARRIED OUT
15 BY THE MOST EXPEDITIOUS MEANS, THE RECEIVING BANK IS OBLIGED TO
16 TRANSMIT ITS PAYMENT ORDER BY THE MOST EXPEDITIOUS AVAILABLE
17 MEANS, AND TO INSTRUCT ANY INTERMEDIARY BANK ACCORDINGLY. IF A
18 SENDER'S INSTRUCTION STATES A PAYMENT DATE, THE RECEIVING BANK IS
19 OBLIGED TO TRANSMIT ITS PAYMENT ORDER AT A TIME AND BY MEANS REA-
20 SONABLY NECESSARY TO ALLOW PAYMENT TO THE BENEFICIARY ON THE PAY-
21 MENT DATE OR AS SOON THEREAFTER AS IS FEASIBLE.

22 (2) UNLESS OTHERWISE INSTRUCTED, A RECEIVING BANK EXECUTING
23 A PAYMENT ORDER MAY USE ANY FUNDS-TRANSFER SYSTEM IF USE OF THAT
24 SYSTEM IS REASONABLE IN THE CIRCUMSTANCES, AND ISSUE A PAYMENT
25 ORDER TO THE BENEFICIARY'S BANK OR TO AN INTERMEDIARY BANK
26 THROUGH WHICH A PAYMENT ORDER CONFORMING TO THE SENDER'S ORDER
27 CAN EXPEDITIOUSLY BE ISSUED TO THE BENEFICIARY'S BANK IF THE

1 RECEIVING BANK EXERCISES ORDINARY CARE IN THE SELECTION OF THE
2 INTERMEDIARY BANK. A RECEIVING BANK IS NOT REQUIRED TO FOLLOW AN
3 INSTRUCTION OF THE SENDER DESIGNATING A FUNDS-TRANSFER SYSTEM TO
4 BE USED IN CARRYING OUT THE FUNDS TRANSFER IF THE RECEIVING BANK,
5 IN GOOD FAITH, DETERMINES THAT IT IS NOT FEASIBLE TO FOLLOW THE
6 INSTRUCTION OR THAT FOLLOWING THE INSTRUCTION WOULD UNDULY DELAY
7 COMPLETION OF THE FUNDS TRANSFER.

8 (3) UNLESS SUBSECTION (1)(B) APPLIES OR THE RECEIVING BANK
9 IS OTHERWISE INSTRUCTED, THE BANK MAY EXECUTE A PAYMENT ORDER BY
10 TRANSMITTING ITS PAYMENT ORDER BY FIRST-CLASS MAIL OR BY ANY
11 MEANS REASONABLE IN THE CIRCUMSTANCES. IF THE RECEIVING BANK IS
12 INSTRUCTED TO EXECUTE THE SENDER'S ORDER BY TRANSMITTING ITS PAY-
13 MENT ORDER BY A PARTICULAR MEANS, THE RECEIVING BANK MAY ISSUE
14 ITS PAYMENT ORDER BY THE MEANS STATED OR BY ANY MEANS AS EXPEDI-
15 TIOUS AS THE MEANS STATED.

16 (4) UNLESS INSTRUCTED BY THE SENDER, THE RECEIVING BANK MAY
17 NOT OBTAIN PAYMENT OF ITS CHARGES FOR SERVICES AND EXPENSES IN
18 CONNECTION WITH THE EXECUTION OF THE SENDER'S ORDER BY ISSUING A
19 PAYMENT ORDER IN AN AMOUNT EQUAL TO THE AMOUNT OF THE SENDER'S
20 ORDER LESS THE AMOUNT OF THE CHARGES, AND MAY NOT INSTRUCT A SUB-
21 SEQUENT RECEIVING BANK TO OBTAIN PAYMENT OF ITS CHARGES IN THE
22 SAME MANNER.

23 SEC. 4A303. (1) A RECEIVING BANK THAT EXECUTES THE PAYMENT
24 ORDER OF THE SENDER BY ISSUING A PAYMENT ORDER IN AN AMOUNT
25 GREATER THAN THE AMOUNT OF THE SENDER'S ORDER, OR ISSUES A PAY-
26 MENT ORDER IN EXECUTION OF THE SENDER'S ORDER AND THEN ISSUES A
27 DUPLICATE ORDER, IS ENTITLED TO PAYMENT OF THE AMOUNT OF THE

1 SENDER'S ORDER UNDER SECTION 4A402(3) IF THAT SUBSECTION IS
2 OTHERWISE SATISFIED. THE BANK IS ENTITLED TO RECOVER FROM THE
3 BENEFICIARY OF THE ERRONEOUS ORDER THE EXCESS PAYMENT RECEIVED TO
4 THE EXTENT ALLOWED BY THE LAW GOVERNING MISTAKE AND RESTITUTION.

5 (2) A RECEIVING BANK THAT EXECUTES THE PAYMENT ORDER OF THE
6 SENDER BY ISSUING A PAYMENT ORDER IN AN AMOUNT LESS THAN THE
7 AMOUNT OF THE SENDER'S ORDER IS ENTITLED TO PAYMENT OF THE AMOUNT
8 OF THE SENDER'S ORDER UNDER SECTION 4A402(3) IF THAT SUBSECTION
9 IS OTHERWISE SATISFIED AND THE BANK CORRECTS ITS MISTAKE BY ISSU-
10 ING AN ADDITIONAL PAYMENT ORDER FOR THE BENEFIT OF THE BENEFI-
11 CIARY OF THE SENDER'S ORDER. IF THE ERROR IS NOT CORRECTED, THE
12 ISSUER OF THE ERRONEOUS ORDER IS ENTITLED TO RECEIVE OR RETAIN
13 PAYMENT FROM THE SENDER OF THE ORDER IT ACCEPTED ONLY TO THE
14 EXTENT OF THE AMOUNT OF THE ERRONEOUS ORDER. THIS SUBSECTION
15 DOES NOT APPLY IF THE RECEIVING BANK EXECUTES THE SENDER'S PAY-
16 MENT ORDER BY ISSUING A PAYMENT ORDER IN AN AMOUNT LESS THAN THE
17 AMOUNT OF THE SENDER'S ORDER FOR THE PURPOSE OF OBTAINING PAYMENT
18 OF ITS CHARGES FOR SERVICES AND EXPENSES PURSUANT TO INSTRUCTION
19 OF THE SENDER.

20 (3) IF A RECEIVING BANK EXECUTES THE PAYMENT ORDER OF THE
21 SENDER BY ISSUING A PAYMENT ORDER TO A BENEFICIARY DIFFERENT FROM
22 THE BENEFICIARY OF THE SENDER'S ORDER AND THE FUNDS TRANSFER IS
23 COMPLETED ON THE BASIS OF THAT ERROR, THE SENDER OF THE PAYMENT
24 ORDER THAT WAS ERRONEOUSLY EXECUTED AND ALL PREVIOUS SENDERS IN
25 THE FUNDS TRANSFER ARE NOT OBLIGED TO PAY THE PAYMENT ORDERS THEY
26 ISSUED. THE ISSUER OF THE ERRONEOUS ORDER IS ENTITLED TO RECOVER

1 FROM THE BENEFICIARY OF THE ORDER THE PAYMENT RECEIVED TO THE
2 EXTENT ALLOWED BY THE LAW GOVERNING MISTAKE AND RESTITUTION.

3 SEC. 4A304. IF THE SENDER OF A PAYMENT ORDER THAT IS ERRO-
4 NEOUSLY EXECUTED AS STATED IN SECTION 4A303 RECEIVES NOTIFICATION
5 FROM THE RECEIVING BANK THAT THE ORDER WAS EXECUTED OR THAT THE
6 SENDER'S ACCOUNT WAS DEBITED WITH RESPECT TO THE ORDER, THE
7 SENDER HAS A DUTY TO EXERCISE ORDINARY CARE TO DETERMINE, ON THE
8 BASIS OF INFORMATION AVAILABLE TO THE SENDER, THAT THE ORDER WAS
9 ERRONEOUSLY EXECUTED AND TO NOTIFY THE BANK OF THE RELEVANT FACTS
10 WITHIN A REASONABLE TIME NOT EXCEEDING 90 DAYS AFTER THE NOTIFI-
11 CATION FROM THE BANK WAS RECEIVED BY THE SENDER. IF THE SENDER
12 FAILS TO PERFORM THAT DUTY, THE BANK IS NOT OBLIGED TO PAY INTER-
13 EST ON ANY AMOUNT REFUNDABLE TO THE SENDER UNDER SECTION 4A402(4)
14 FOR THE PERIOD BEFORE THE BANK LEARNS OF THE EXECUTION ERROR.
15 THE BANK IS NOT ENTITLED TO ANY RECOVERY FROM THE SENDER ON
16 ACCOUNT OF A FAILURE BY THE SENDER TO PERFORM THE DUTY STATED IN
17 THIS SECTION.

18 SEC. 4A305. (1) IF A FUNDS TRANSFER IS COMPLETED BUT EXECU-
19 TION OF A PAYMENT ORDER BY THE RECEIVING BANK IN BREACH OF SEC-
20 TION 4A302 RESULTS IN DELAY IN PAYMENT TO THE BENEFICIARY, THE
21 BANK IS OBLIGED TO PAY INTEREST TO EITHER THE ORIGINATOR OR THE
22 BENEFICIARY OF THE FUNDS TRANSFER FOR THE PERIOD OF DELAY CAUSED
23 BY THE IMPROPER EXECUTION. EXCEPT AS PROVIDED IN SUBSECTION (3),
24 ADDITIONAL DAMAGES ARE NOT RECOVERABLE.

25 (2) IF EXECUTION OF A PAYMENT ORDER BY A RECEIVING BANK IN
26 BREACH OF SECTION 4A302 RESULTS IN NONCOMPLETION OF THE FUNDS
27 TRANSFER, FAILURE TO USE AN INTERMEDIARY BANK DESIGNATED BY THE

1 ORIGINATOR, OR ISSUANCE OF A PAYMENT ORDER THAT DOES NOT COMPLY
2 WITH THE TERMS OF THE PAYMENT ORDER OF THE ORIGINATOR, THE BANK
3 IS LIABLE TO THE ORIGINATOR FOR ITS EXPENSES IN THE FUNDS TRANS-
4 FER AND FOR INCIDENTAL EXPENSES AND INTEREST LOSSES, TO THE
5 EXTENT NOT COVERED BY SUBSECTION (1), RESULTING FROM THE IMPROPER
6 EXECUTION. EXCEPT AS PROVIDED IN SUBSECTION (3), ADDITIONAL DAM-
7 AGES ARE NOT RECOVERABLE.

8 (3) IN ADDITION TO THE AMOUNTS PAYABLE UNDER SUBSECTIONS (1)
9 AND (2), DAMAGES, INCLUDING CONSEQUENTIAL DAMAGES, ARE RECOVER-
10 ABLE TO THE EXTENT PROVIDED IN AN EXPRESS WRITTEN AGREEMENT OF
11 THE RECEIVING BANK.

12 (4) IF A RECEIVING BANK FAILS TO EXECUTE A PAYMENT ORDER IT
13 WAS OBLIGED BY EXPRESS AGREEMENT TO EXECUTE, THE RECEIVING BANK
14 IS LIABLE TO THE SENDER FOR ITS EXPENSES IN THE TRANSACTION AND
15 FOR INCIDENTAL EXPENSES AND INTEREST LOSSES RESULTING FROM THE
16 FAILURE TO EXECUTE. ADDITIONAL DAMAGES, INCLUDING CONSEQUENTIAL
17 DAMAGES, ARE RECOVERABLE TO THE EXTENT PROVIDED IN AN EXPRESS
18 WRITTEN AGREEMENT OF THE RECEIVING BANK, BUT ARE NOT OTHERWISE
19 RECOVERABLE.

20 (5) REASONABLE ATTORNEY'S FEES ARE RECOVERABLE IF DEMAND FOR
21 COMPENSATION UNDER SUBSECTION (1) OR (2) IS MADE AND REFUSED
22 BEFORE AN ACTION IS BROUGHT ON THE CLAIM. IF A CLAIM IS MADE FOR
23 BREACH OF AN AGREEMENT UNDER SUBSECTION (4) AND THE AGREEMENT
24 DOES NOT PROVIDE FOR DAMAGES, REASONABLE ATTORNEY'S FEES ARE
25 RECOVERABLE IF DEMAND FOR COMPENSATION UNDER SUBSECTION (4) IS
26 MADE AND REFUSED BEFORE AN ACTION IS BROUGHT ON THE CLAIM.

1 (6) EXCEPT AS STATED IN THIS SECTION, THE LIABILITY OF A
2 RECEIVING BANK UNDER SUBSECTIONS (1) AND (2) MAY NOT BE VARIED BY
3 AGREEMENT.

4 PART 4. PAYMENT

5 SEC. 4A401. "PAYMENT DATE" OF A PAYMENT ORDER MEANS THE DAY
6 ON WHICH THE AMOUNT OF THE ORDER IS PAYABLE TO THE BENEFICIARY BY
7 THE BENEFICIARY'S BANK. THE PAYMENT DATE MAY BE DETERMINED BY
8 INSTRUCTION OF THE SENDER BUT CANNOT BE EARLIER THAN THE DAY THE
9 ORDER IS RECEIVED BY THE BENEFICIARY'S BANK AND, UNLESS OTHERWISE
10 DETERMINED, IS THE DAY THE ORDER IS RECEIVED BY THE BENEFICIARY'S
11 BANK.

12 SEC. 4A402. (1) THIS SECTION IS SUBJECT TO SECTIONS 4A205
13 AND 4A207.

14 (2) WITH RESPECT TO A PAYMENT ORDER ISSUED TO THE
15 BENEFICIARY'S BANK, ACCEPTANCE OF THE ORDER BY THE BANK OBLIGES
16 THE SENDER TO PAY THE BANK THE AMOUNT OF THE ORDER, BUT PAYMENT
17 IS NOT DUE UNTIL THE PAYMENT DATE OF THE ORDER.

18 (3) THIS SUBSECTION IS SUBJECT TO SUBSECTION (5) AND TO SEC-
19 TION 4A303. WITH RESPECT TO A PAYMENT ORDER ISSUED TO A RECEIV-
20 ING BANK OTHER THAN THE BENEFICIARY'S BANK, ACCEPTANCE OF THE
21 ORDER BY THE RECEIVING BANK OBLIGES THE SENDER TO PAY THE BANK
22 THE AMOUNT OF THE SENDER'S ORDER. PAYMENT BY THE SENDER IS NOT
23 DUE UNTIL THE EXECUTION DATE OF THE SENDER'S ORDER. THE OBLIGA-
24 TION OF THAT SENDER TO PAY ITS PAYMENT ORDER IS EXCUSED IF THE
25 FUNDS TRANSFER IS NOT COMPLETED BY ACCEPTANCE BY THE
26 BENEFICIARY'S BANK OF A PAYMENT ORDER INSTRUCTING PAYMENT TO THE
27 BENEFICIARY OF THAT SENDER'S PAYMENT ORDER.

1 (4) IF THE SENDER OF A PAYMENT ORDER PAYS THE ORDER AND WAS
2 NOT OBLIGED TO PAY ALL OR PART OF THE AMOUNT PAID, THE BANK
3 RECEIVING PAYMENT IS OBLIGED TO REFUND PAYMENT TO THE EXTENT THE
4 SENDER WAS NOT OBLIGED TO PAY. EXCEPT AS PROVIDED IN SECTIONS
5 4A204 AND 4A304, INTEREST IS PAYABLE ON THE REFUNDABLE AMOUNT
6 FROM THE DATE OF PAYMENT.

7 (5) IF A FUNDS TRANSFER IS NOT COMPLETED AS STATED IN SUB-
8 SECTION (3) AND AN INTERMEDIARY BANK IS OBLIGED TO REFUND PAYMENT
9 AS STATED IN SUBSECTION (4) BUT IS UNABLE TO DO SO BECAUSE NOT
10 PERMITTED BY APPLICABLE LAW OR BECAUSE THE BANK SUSPENDS PAY-
11 MENTS, A SENDER IN THE FUNDS TRANSFER THAT EXECUTED A PAYMENT
12 ORDER IN COMPLIANCE WITH AN INSTRUCTION, AS STATED IN SECTION
13 4A302(1)(A), TO ROUTE THE FUNDS TRANSFER THROUGH THAT INTERMEDI-
14 ARY BANK IS ENTITLED TO RECEIVE OR RETAIN PAYMENT FROM THE SENDER
15 OF THE PAYMENT ORDER THAT IT ACCEPTED. THE FIRST SENDER IN THE
16 FUNDS TRANSFER THAT ISSUED AN INSTRUCTION REQUIRING ROUTING
17 THROUGH THAT INTERMEDIARY BANK IS SUBROGATED TO THE RIGHT OF THE
18 BANK THAT PAID THE INTERMEDIARY BANK TO REFUND AS STATED IN SUB-
19 SECTION (4).

20 (6) THE RIGHT OF THE SENDER OF A PAYMENT ORDER TO BE EXCUSED
21 FROM THE OBLIGATION TO PAY THE ORDER AS STATED IN SUBSECTION (3)
22 OR TO RECEIVE REFUND UNDER SUBSECTION (4) MAY NOT BE VARIED BY
23 AGREEMENT.

24 SEC. 4A403. (1) PAYMENT OF THE SENDER'S OBLIGATION UNDER
25 SECTION 4A402 TO PAY THE RECEIVING BANK OCCURS AS FOLLOWS:

26 (A) IF THE SENDER IS A BANK, PAYMENT OCCURS WHEN THE
27 RECEIVING BANK RECEIVES FINAL SETTLEMENT OF THE OBLIGATION

1 THROUGH A FEDERAL RESERVE BANK OR THROUGH A FUNDS-TRANSFER
2 SYSTEM.

3 (B) IF THE SENDER IS A BANK AND THE SENDER (i) CREDITED AN
4 ACCOUNT OF THE RECEIVING BANK WITH THE SENDER, OR (ii) CAUSED AN
5 ACCOUNT OF THE RECEIVING BANK IN ANOTHER BANK TO BE CREDITED,
6 PAYMENT OCCURS WHEN THE CREDIT IS WITHDRAWN OR, IF NOT WITHDRAWN,
7 AT MIDNIGHT OF THE DAY ON WHICH THE CREDIT IS WITHDRAWABLE AND
8 THE RECEIVING BANK LEARNS OF THAT FACT.

9 (C) IF THE RECEIVING BANK DEBITS AN ACCOUNT OF THE SENDER
10 WITH THE RECEIVING BANK, PAYMENT OCCURS WHEN THE DEBIT IS MADE TO
11 THE EXTENT THE DEBIT IS COVERED BY A WITHDRAWABLE CREDIT BALANCE
12 IN THE ACCOUNT.

13 (2) IF THE SENDER AND RECEIVING BANK ARE MEMBERS OF A
14 FUNDS-TRANSFER SYSTEM THAT NETS OBLIGATIONS MULTILATERALLY AMOUNT
15 PARTICIPANTS, THE RECEIVING BANK RECEIVES FINAL SETTLEMENT WHEN
16 SETTLEMENT IS COMPLETE IN ACCORDANCE WITH THE RULES OF THE
17 SYSTEM. THE OBLIGATION OF THE SENDER TO PAY THE AMOUNT OF A PAY-
18 MENT ORDER TRANSMITTED THROUGH THE FUNDS-TRANSFER SYSTEM MAY BE
19 SATISFIED, TO THE EXTENT PERMITTED BY THE RULES OF THE SYSTEM, BY
20 SETTING OFF AND APPLYING AGAINST THE SENDER'S OBLIGATION THE
21 RIGHT OF THE SENDER TO RECEIVE PAYMENT FROM THE RECEIVING BANK OF
22 THE AMOUNT OF ANY OTHER PAYMENT ORDER TRANSMITTED TO THE SENDER
23 BY THE RECEIVING BANK THROUGH THE FUNDS-TRANSFER SYSTEM. THE
24 AGGREGATE BALANCE OF OBLIGATIONS OWED BY EACH SENDER TO EACH
25 RECEIVING BANK IN THE FUNDS-TRANSFER SYSTEM MAY BE SATISFIED, TO
26 THE EXTENT PERMITTED BY THE RULES OF THE SYSTEM, BY SETTING OFF
27 AND APPLYING AGAINST THAT BALANCE THE AGGREGATE BALANCE OF

1 OBLIGATIONS OWED TO THE SENDER BY OTHER MEMBERS OF THE SYSTEM.
2 THE AGGREGATE BALANCE IS DETERMINED AFTER THE RIGHT OF SETOFF
3 STATED IN THE SECOND SENTENCE OF THIS SUBSECTION HAS BEEN
4 EXERCISED.

5 (3) IF 2 BANKS TRANSMIT PAYMENT ORDERS TO EACH OTHER UNDER
6 AN AGREEMENT THAT SETTLEMENT OF THE OBLIGATIONS OF EACH BANK TO
7 THE OTHER UNDER SECTION 4A402 WILL BE MADE AT THE END OF THE DAY
8 OR OTHER PERIOD, THE TOTAL AMOUNT OWED WITH RESPECT TO ALL ORDERS
9 TRANSMITTED BY 1 BANK SHALL BE SET OFF AGAINST THE TOTAL AMOUNT
10 OWED WITH RESPECT TO ALL ORDERS TRANSMITTED BY THE OTHER BANK.
11 TO THE EXTENT OF THE SETOFF, EACH BANK HAS MADE PAYMENT TO THE
12 OTHER.

13 (4) IN A CASE NOT COVERED BY SUBSECTION (1), THE TIME WHEN
14 PAYMENT OF THE SENDER'S OBLIGATION UNDER SECTION 4A402(2) OR (3)
15 OCCURS IS GOVERNED BY APPLICABLE PRINCIPLES OF LAW THAT DETERMINE
16 WHEN AN OBLIGATION IS SATISFIED.

17 SEC. 4A404. (1) SUBJECT TO SECTIONS 4A211(5), 4A405(4), AND
18 4A405(5), IF A BENEFICIARY'S BANK ACCEPTS A PAYMENT ORDER, THE
19 BANK IS OBLIGED TO PAY THE AMOUNT OF THE ORDER TO THE BENEFICIARY
20 OF THE ORDER. PAYMENT IS DUE ON THE PAYMENT DATE OF THE ORDER,
21 BUT IF ACCEPTANCE OCCURS ON THE PAYMENT DATE AFTER THE CLOSE OF
22 THE FUNDS-TRANSFER BUSINESS DAY OF THE BANK, PAYMENT IS DUE ON
23 THE NEXT FUNDS-TRANSFER BUSINESS DAY. IF THE BANK REFUSES TO PAY
24 AFTER DEMAND BY THE BENEFICIARY AND RECEIPT OF NOTICE OF PARTICU-
25 LAR CIRCUMSTANCES THAT WILL GIVE RISE TO CONSEQUENTIAL DAMAGES AS
26 A RESULT OF NONPAYMENT, THE BENEFICIARY MAY RECOVER DAMAGES
27 RESULTING FROM THE REFUSAL TO PAY TO THE EXTENT THE BANK HAD

1 NOTICE OF THE DAMAGES, UNLESS THE BANK PROVES THAT IT DID NOT PAY
2 BECAUSE OF A REASONABLE DOUBT CONCERNING THE RIGHT OF THE BENEFICIARY
3 TO PAYMENT.

4 (2) IF A PAYMENT ORDER ACCEPTED BY THE BENEFICIARY'S BANK
5 INSTRUCTS PAYMENT TO AN ACCOUNT OF THE BENEFICIARY, THE BANK IS
6 OBLIGED TO NOTIFY THE BENEFICIARY OF RECEIPT OF THE ORDER BEFORE
7 MIDNIGHT OF THE NEXT FUNDS-TRANSFER BUSINESS DAY FOLLOWING THE
8 PAYMENT DATE. IF THE PAYMENT ORDER DOES NOT INSTRUCT PAYMENT TO
9 AN ACCOUNT OF THE BENEFICIARY, THE BANK IS REQUIRED TO NOTIFY THE
10 BENEFICIARY ONLY IF NOTICE IS REQUIRED BY THE ORDER. NOTICE MAY
11 BE GIVEN BY FIRST-CLASS MAIL OR ANY OTHER MEANS REASONABLE IN THE
12 CIRCUMSTANCES. IF THE BANK FAILS TO GIVE THE REQUIRED NOTICE,
13 THE BANK IS OBLIGED TO PAY INTEREST TO THE BENEFICIARY ON THE
14 AMOUNT OF THE PAYMENT ORDER FROM THE DAY NOTICE SHOULD HAVE BEEN
15 GIVEN UNTIL THE DAY THE BENEFICIARY LEARNED OF RECEIPT OF THE
16 PAYMENT ORDER BY THE BANK. NO OTHER DAMAGES ARE RECOVERABLE.
17 REASONABLE ATTORNEY'S FEES ARE ALSO RECOVERABLE IF DEMAND FOR
18 INTEREST IS MADE AND REFUSED BEFORE AN ACTION IS BROUGHT ON THE
19 CLAIM.

20 (3) THE RIGHT OF A BENEFICIARY TO RECEIVE PAYMENT AND DAMAGES
21 AS STATED IN SUBSECTION (1) MAY NOT BE VARIED BY AGREEMENT
22 OR A FUNDS-TRANSFER SYSTEM RULE. THE RIGHT OF A BENEFICIARY TO
23 BE NOTIFIED AS STATED IN SUBSECTION (2) MAY BE VARIED BY AGREEMENT
24 OF THE BENEFICIARY OR BY A FUNDS-TRANSFER SYSTEM RULE IF THE
25 BENEFICIARY IS NOTIFIED OF THE RULE BEFORE INITIATION OF THE
26 FUNDS TRANSFER.

1 SEC. 4A405. (1) IF THE BENEFICIARY'S BANK CREDITS AN
2 ACCOUNT OF THE BENEFICIARY OF A PAYMENT ORDER, PAYMENT OF THE
3 BANK'S OBLIGATION UNDER SECTION 4A404(1) OCCURS WHEN AND TO THE
4 EXTENT (i) THE BENEFICIARY IS NOTIFIED OF THE RIGHT TO WITHDRAW
5 THE CREDIT, (ii) THE BANK LAWFULLY APPLIES THE CREDIT TO A DEBT
6 OF THE BENEFICIARY, OR (iii) FUNDS WITH RESPECT TO THE ORDER ARE
7 OTHERWISE MADE AVAILABLE TO THE BENEFICIARY BY THE BANK.

8 (2) IF THE BENEFICIARY'S BANK DOES NOT CREDIT AN ACCOUNT OF
9 THE BENEFICIARY OF A PAYMENT ORDER, THE TIME WHEN PAYMENT OF THE
10 BANK'S OBLIGATION UNDER SECTION 4A404(1) OCCURS IS GOVERNED BY
11 PRINCIPLES OF LAW THAT DETERMINE WHEN AN OBLIGATION IS
12 SATISFIED.

13 (3) EXCEPT AS STATED IN SUBSECTIONS (4) AND (5), IF THE
14 BENEFICIARY'S BANK PAYS THE BENEFICIARY OF A PAYMENT ORDER UNDER
15 A CONDITION TO PAYMENT OR AGREEMENT OF THE BENEFICIARY GIVING THE
16 BANK THE RIGHT TO RECOVER PAYMENT FROM THE BENEFICIARY IF THE
17 BANK DOES NOT RECEIVE PAYMENT OF THE ORDER, THE CONDITION TO PAY-
18 MENT OR AGREEMENT IS NOT ENFORCEABLE.

19 (4) A FUNDS-TRANSFER SYSTEM RULE MAY PROVIDE THAT PAYMENTS
20 MADE TO BENEFICIARIES OF FUNDS TRANSFERS MADE THROUGH THE SYSTEM
21 ARE PROVISIONAL UNTIL RECEIPT OF PAYMENT BY THE BENEFICIARY'S
22 BANK OF THE PAYMENT ORDER IS ACCEPTED. A BENEFICIARY'S BANK THAT
23 MAKES A PAYMENT THAT IS PROVISIONAL UNDER THE RULE IS ENTITLED TO
24 REFUND FROM THE BENEFICIARY IF (i) THE RULE REQUIRES THAT BOTH
25 THE BENEFICIARY AND THE ORIGINATOR BE GIVEN NOTICE OF THE PROVI-
26 SIONAL NATURE OF THE PAYMENT BEFORE THE FUNDS TRANSFER IS
27 INITIATED, (ii) THE BENEFICIARY, THE BENEFICIARY'S BANK, AND THE

1 ORIGINATOR'S BANK AGREED TO BE BOUND BY THE RULE, AND (iii) THE
2 BENEFICIARY'S BANK DID NOT RECEIVE PAYMENT OF THE PAYMENT ORDER
3 THAT IT ACCEPTED. IF THE BENEFICIARY IS OBLIGED TO REFUND PAY-
4 MENT TO THE BENEFICIARY'S BANK, ACCEPTANCE OF THE PAYMENT ORDER
5 BY THE BENEFICIARY'S BANK IS NULLIFIED AND NO PAYMENT BY THE
6 ORIGINATOR OF THE FUNDS TRANSFER TO THE BENEFICIARY OCCURS UNDER
7 SECTION 4A406.

8 (5) THIS SUBSECTION APPLIES TO THE FUNDS TRANSFER THAT
9 INCLUDES A PAYMENT ORDER TRANSMITTED OVER A FUNDS-TRANSFER SYSTEM
10 THAT (i) NETS OBLIGATIONS MULTILATERALLY AMONG PARTICIPANTS, AND
11 (ii) HAS IN EFFECT A LOSS-SHARING AGREEMENT AMONG PARTICIPANTS
12 FOR THE PURPOSE OF PROVIDING FUNDS NECESSARY TO COMPLETE SETTLE-
13 MENT OF THE OBLIGATIONS OF 1 OR MORE PARTICIPANTS THAT DO NOT
14 MEET THEIR SETTLEMENT OBLIGATIONS. IF THE BENEFICIARY'S BANK IN
15 THE FUNDS TRANSFER ACCEPTS A PAYMENT ORDER AND THE SYSTEM FAILS
16 TO COMPLETE SETTLEMENT PURSUANT TO ITS RULES WITH RESPECT TO ANY
17 PAYMENT ORDER IN THE FUNDS TRANSFER, (i) THE ACCEPTANCE BY THE
18 BENEFICIARY'S BANK IS NULLIFIED AND NO PERSON HAS ANY RIGHT OR
19 OBLIGATION BASED ON THE ACCEPTANCE, (ii) THE BENEFICIARY'S BANK
20 IS ENTITLED TO RECOVER PAYMENT FROM THE BENEFICIARY, (iii) NO
21 PAYMENT BY THE ORIGINATOR TO THE BENEFICIARY OCCURS UNDER SECTION
22 4A406, AND (iv) SUBJECT TO SECTION 4A402(5), EACH SENDER IN THE
23 FUNDS TRANSFER IS EXCUSED FROM ITS OBLIGATION TO PAY ITS PAYMENT
24 ORDER UNDER SECTION 4A402(3) BECAUSE THE FUNDS TRANSFER HAS NOT
25 BEEN COMPLETED.

26 SEC. 4A406. (1) SUBJECT TO SECTIONS 4A211(5), 4A405(4), AND
27 4A405(5), THE ORIGINATOR OF A FUNDS TRANSFER PAYS THE BENEFICIARY

1 OF THE ORIGINATOR'S PAYMENT ORDER (i) AT THE TIME A PAYMENT ORDER
2 FOR THE BENEFIT OF THE BENEFICIARY IS ACCEPTED BY THE
3 BENEFICIARY'S BANK IN THE FUNDS TRANSFER AND (ii) IN AN AMOUNT
4 EQUAL TO THE AMOUNT OF THE ORDER ACCEPTED BY THE BENEFICIARY'S
5 BANK, BUT NOT MORE THAN THE AMOUNT OF THE ORIGINATOR'S ORDER.

6 (2) IF PAYMENT UNDER SUBSECTION (1) IS MADE TO SATISFY AN
7 OBLIGATION, THE OBLIGATION IS DISCHARGED TO THE SAME EXTENT DIS-
8 CHARGE WOULD RESULT FROM PAYMENT TO THE BENEFICIARY OF THE SAME
9 AMOUNT IN MONEY, UNLESS (i) THE PAYMENT UNDER SUBSECTION (1) WAS
10 MADE BY A MEANS PROHIBITED BY THE CONTRACT OF THE BENEFICIARY
11 WITH RESPECT TO THE OBLIGATION, (ii) THE BENEFICIARY, WITHIN A
12 REASONABLE TIME AFTER RECEIVING NOTICE OF RECEIPT OF THE ORDER BY
13 THE BENEFICIARY'S BANK, NOTIFIED THE ORIGINATOR OF THE
14 BENEFICIARY'S REFUSAL OF THE PAYMENT, (iii) FUNDS WITH RESPECT TO
15 THE ORDER WERE NOT WITHDRAWN BY THE BENEFICIARY OR APPLIED TO A
16 DEBT OF THE BENEFICIARY, AND (iv) THE BENEFICIARY WOULD SUFFER A
17 LOSS THAT COULD REASONABLY HAVE BEEN AVOIDED IF PAYMENT HAD BEEN
18 MADE BY A MEANS COMPLYING WITH THE CONTRACT. IF PAYMENT BY THE
19 ORIGINATOR DOES NOT RESULT IN DISCHARGE UNDER THIS SECTION, THE
20 ORIGINATOR IS SUBROGATED TO THE RIGHTS OF THE BENEFICIARY TO
21 RECEIVE PAYMENT FROM THE BENEFICIARY'S BANK UNDER SECTION
22 4A404(1).

23 (3) FOR THE PURPOSE OF DETERMINING WHETHER DISCHARGE OF AN
24 OBLIGATION OCCURS UNDER SUBSECTION (2), IF THE BENEFICIARY'S BANK
25 ACCEPTS A PAYMENT ORDER IN AN AMOUNT EQUAL TO THE AMOUNT OF THE
26 ORIGINATOR'S PAYMENT ORDER LESS CHARGES OF 1 OR MORE RECEIVING
27 BANKS IN THE FUNDS TRANSFER, PAYMENT TO THE BENEFICIARY IS DEEMED

1 TO BE IN THE AMOUNT OF THE ORIGINATOR'S ORDER UNLESS UPON DEMAND
2 BY THE BENEFICIARY THE ORIGINATOR DOES NOT PAY THE BENEFICIARY
3 THE AMOUNT OF THE DEDUCTED CHARGES.

4 (4) RIGHTS OF THE ORIGINATOR OR OF THE BENEFICIARY OF A
5 FUNDS TRANSFER UNDER THIS SECTION MAY BE VARIED ONLY BY AGREEMENT
6 OF THE ORIGINATOR AND THE BENEFICIARY.

7 PART 5. MISCELLANEOUS PROVISIONS

8 SEC. 4A501. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS ARTI-
9 CLE, THE RIGHTS AND OBLIGATIONS OF A PARTY TO A FUNDS TRANSFER
10 MAY BE VARIED BY AGREEMENT OF THE AFFECTED PARTY.

11 (2) "FUNDS-TRANSFER SYSTEM RULE" MEANS A RULE OF AN ASSOCIA-
12 TION OF BANKS (i) GOVERNING TRANSMISSION OF PAYMENT ORDERS BY
13 MEANS OF A FUNDS-TRANSFER SYSTEM OF THE ASSOCIATION OR RIGHTS AND
14 OBLIGATIONS WITH RESPECT TO THOSE ORDERS, OR (ii) TO THE EXTENT
15 THE RULE GOVERNS RIGHTS AND OBLIGATIONS BETWEEN BANKS THAT ARE
16 PARTIES TO A FUNDS TRANSFER IN WHICH A FEDERAL RESERVE BANK,
17 ACTING AS AN INTERMEDIARY BANK, SENDS A PAYMENT ORDER TO THE
18 BENEFICIARY'S BANK. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTI-
19 CLE, A FUNDS-TRANSFER SYSTEM RULE GOVERNING RIGHTS AND OBLIGA-
20 TIONS BETWEEN PARTICIPATING BANKS USING THE SYSTEM MAY BE EFFEC-
21 TIVE EVEN IF THE RULE CONFLICTS WITH THIS ARTICLE AND INDIRECTLY
22 AFFECTS ANOTHER PARTY TO THE FUNDS TRANSFER WHO DOES NOT CONSENT
23 TO THE RULE. A FUNDS-TRANSFER SYSTEM RULE MAY ALSO GOVERN RIGHTS
24 AND OBLIGATIONS OF PARTIES OTHER THAN PARTICIPATING BANKS USING
25 THE SYSTEM TO THE EXTENT STATED IN SECTIONS 4A404(3), 4A405(4),
26 AND 4A507(3).

1 SEC. 4A502. (1) AS USED IN THIS SECTION, "CREDITOR PROCESS"
2 MEANS LEVY, ATTACHMENT, GARNISHMENT, NOTICE OF LIEN,
3 SEQUESTRATION, OR SIMILAR PROCESS ISSUED BY OR ON BEHALF OF A
4 CREDITOR OR OTHER CLAIMANT WITH RESPECT TO AN ACCOUNT.

5 (2) THIS SUBSECTION APPLIES TO CREDITOR PROCESS WITH RESPECT
6 TO AN AUTHORIZED ACCOUNT OF THE SENDER OF A PAYMENT ORDER IF THE
7 CREDITOR PROCESS IS SERVED ON THE RECEIVING BANK. FOR THE PUR-
8 POSE OF DETERMINING RIGHTS WITH RESPECT TO THE CREDITOR PROCESS,
9 IF THE RECEIVING BANK ACCEPTS THAT PAYMENT ORDER THE BALANCE IN
10 THE AUTHORIZED ACCOUNT IS DEEMED TO BE REDUCED BY THE AMOUNT OF
11 THE PAYMENT ORDER TO THE EXTENT THE BANK DID NOT OTHERWISE
12 RECEIVE PAYMENT OF THE ORDER, UNLESS THE CREDITOR PROCESS IS
13 SERVED AT A TIME AND IN A MANNER AFFORDING THE BANK A REASONABLE
14 OPPORTUNITY TO ACT ON IT BEFORE THE BANK ACCEPTS THE PAYMENT
15 ORDER.

16 (3) IF A BENEFICIARY'S BANK HAS RECEIVED A PAYMENT ORDER FOR
17 PAYMENT TO THE BENEFICIARY'S ACCOUNT IN THE BANK, THE FOLLOWING
18 RULES APPLY:

19 (A) THE BANK MAY CREDIT THE BENEFICIARY'S ACCOUNT. THE
20 AMOUNT CREDITED MAY BE SET OFF AGAINST AN OBLIGATION OWED BY THE
21 BENEFICIARY TO THE BANK OR MAY BE APPLIED TO SATISFY CREDITOR
22 PROCESS SERVED ON THE BANK WITH RESPECT TO THE ACCOUNT.

23 (B) THE BANK MAY CREDIT THE BENEFICIARY'S ACCOUNT AND ALLOW
24 WITHDRAWAL OF THE AMOUNT CREDITED UNLESS CREDITOR PROCESS WITH
25 RESPECT TO THE ACCOUNT IS SERVED AT A TIME AND IN A MANNER
26 AFFORDING THE BANK A REASONABLE OPPORTUNITY TO ACT TO PREVENT
27 WITHDRAWAL.

1 (C) IF CREDITOR PROCESS WITH RESPECT TO THE BENEFICIARY'S
2 ACCOUNT HAS BEEN SERVED AND THE BANK HAS HAD A REASONABLE OPPOR-
3 TUNITY TO ACT ON IT, THE BANK MAY NOT REJECT THE PAYMENT ORDER
4 EXCEPT FOR A REASON UNRELATED TO THE SERVICE OF PROCESS.

5 (4) CREDITOR PROCESS WITH RESPECT TO A PAYMENT BY THE ORIGI-
6 NATOR TO THE BENEFICIARY PURSUANT TO A FUNDS TRANSFER MAY BE
7 SERVED ONLY ON THE BENEFICIARY'S BANK WITH RESPECT TO THE DEBT
8 OWED BY THAT BANK TO THE BENEFICIARY. ANY OTHER BANK SERVED WITH
9 THE CREDITOR PROCESS IS NOT OBLIGED TO ACT WITH RESPECT TO THE
10 PROCESS.

11 SEC. 4A503. FOR PROPER CAUSE AND IN COMPLIANCE WITH APPLI-
12 CABLE LAW, A COURT MAY RESTRAIN (i) A PERSON FROM ISSUING A PAY-
13 MENT ORDER TO INITIATE A FUNDS TRANSFER, (ii) AN ORIGINATOR'S
14 BANK FROM EXECUTING THE PAYMENT ORDER OF THE ORIGINATOR, OR (iii)
15 THE BENEFICIARY'S BANK FROM RELEASING FUNDS TO THE BENEFICIARY OR
16 THE BENEFICIARY FROM WITHDRAWING THE FUNDS. A COURT MAY NOT OTH-
17 ERWISE RESTRAIN A PERSON FROM ISSUING A PAYMENT ORDER, PAYING OR
18 RECEIVING PAYMENT OF A PAYMENT ORDER, OR OTHERWISE ACTING WITH
19 RESPECT TO A FUNDS TRANSFER.

20 SEC. 4A504. (1) IF A RECEIVING BANK HAS RECEIVED MORE THAN
21 1 PAYMENT ORDER OF THE SENDER OR 1 OR MORE PAYMENT ORDERS AND
22 OTHER ITEMS THAT ARE PAYABLE FROM THE SENDER'S ACCOUNT, THE BANK
23 MAY CHARGE THE SENDER'S ACCOUNT WITH RESPECT TO THE VARIOUS
24 ORDERS AND ITEMS IN ANY SEQUENCE.

25 (2) IN DETERMINING WHETHER A CREDIT TO AN ACCOUNT HAS BEEN
26 WITHDRAWN BY THE HOLDER OF THE ACCOUNT OR APPLIED TO A DEBT OF

1 THE HOLDER OF THE ACCOUNT, CREDITS FIRST MADE TO THE ACCOUNT ARE
2 FIRST WITHDRAWN OR APPLIED.

3 SEC. 4A505. IF A RECEIVING BANK HAS RECEIVED PAYMENT FROM
4 ITS CUSTOMER WITH RESPECT TO A PAYMENT ORDER ISSUED IN THE NAME
5 OF THE CUSTOMER AS SENDER AND ACCEPTED BY THE BANK, AND THE CUS-
6 TOMER RECEIVED NOTIFICATION REASONABLY IDENTIFYING THE ORDER, THE
7 CUSTOMER IS PRECLUDED FROM ASSERTING THAT THE BANK IS NOT ENTI-
8 TLED TO RETAIN THE PAYMENT UNLESS THE CUSTOMER NOTIFIES THE BANK
9 OF THE CUSTOMER'S OBJECTION TO THE PAYMENT WITHIN 1 YEAR AFTER
10 THE NOTIFICATION WAS RECEIVED BY THE CUSTOMER.

11 SEC. 4A506. (1) IF, UNDER THIS ARTICLE, A RECEIVING BANK IS
12 OBLIGED TO PAY INTEREST WITH RESPECT TO A PAYMENT ORDER ISSUED TO
13 THE BANK, THE AMOUNT PAYABLE MAY BE DETERMINED (i) BY AGREEMENT
14 OF THE SENDER AND RECEIVING BANK, OR (ii) BY A FUNDS-TRANSFER
15 SYSTEM RULE IF THE PAYMENT ORDER IS TRANSMITTED THROUGH A
16 FUNDS-TRANSFER SYSTEM.

17 (2) IF THE AMOUNT OF INTEREST IS NOT DETERMINED BY AN AGREE-
18 MENT OR RULE AS STATED IN SUBSECTION (1), THE AMOUNT IS CALCU-
19 LATED BY MULTIPLYING THE APPLICABLE FEDERAL FUNDS RATE BY THE
20 AMOUNT ON WHICH INTEREST IS PAYABLE, AND THEN MULTIPLYING THE
21 PRODUCT BY THE NUMBER OF DAYS FOR WHICH INTEREST IS PAYABLE. THE
22 APPLICABLE FEDERAL FUNDS RATE IS THE AVERAGE OF THE FEDERAL FUNDS
23 RATES PUBLISHED BY THE FEDERAL RESERVE BANK OF NEW YORK FOR EACH
24 OF THE DAYS FOR WHICH INTEREST IS PAYABLE DIVIDED BY 360. THE
25 FEDERAL FUNDS RATE FOR ANY DAY ON WHICH A PUBLISHED RATE IS NOT
26 AVAILABLE IS THE SAME AS THE PUBLISHED RATE FOR THE NEXT
27 PRECEDING DAY FOR WHICH THERE IS A PUBLISHED RATE. IF A

1 RECEIVING BANK THAT ACCEPTED A PAYMENT ORDER IS REQUIRED TO
2 REFUND PAYMENT TO THE SENDER OF THE ORDER BECAUSE THE FUNDS
3 TRANSFER WAS NOT COMPLETED, BUT THE FAILURE TO COMPLETE WAS NOT
4 DUE TO ANY FAULT BY THE BANK, THE INTEREST PAYABLE IS REDUCED BY
5 A PERCENTAGE EQUAL TO THE RESERVE REQUIREMENT ON DEPOSITS OF THE
6 RECEIVING BANK.

7 SEC. 4A507. (1) THE FOLLOWING RULES APPLY UNLESS THE
8 AFFECTED PARTIES OTHERWISE AGREE OR SUBSECTION (3) APPLIES:

9 (A) THE RIGHTS AND OBLIGATIONS BETWEEN THE SENDER OF A PAY-
10 MENT ORDER AND THE RECEIVING BANK ARE GOVERNED BY THE LAW OF THE
11 JURISDICTION IN WHICH THE RECEIVING BANK IS LOCATED.

12 (B) THE RIGHTS AND OBLIGATIONS BETWEEN THE BENEFICIARY'S
13 BANK AND THE BENEFICIARY ARE GOVERNED BY THE LAW OF THE JURISDIC-
14 TION IN WHICH THE BENEFICIARY'S BANK IS LOCATED.

15 (C) THE ISSUE OF WHEN PAYMENT IS MADE PURSUANT TO A FUNDS
16 TRANSFER BY THE ORIGINATOR TO THE BENEFICIARY IS GOVERNED BY THE
17 LAW OF THE JURISDICTION IN WHICH THE BENEFICIARY'S BANK IS
18 LOCATED.

19 (2) IF THE PARTIES DESCRIBED IN EACH SUBDIVISION OF SUBSEC-
20 TION (1) HAVE MADE AN AGREEMENT SELECTING THE LAW OF A PARTICULAR
21 JURISDICTION TO GOVERN RIGHTS AND OBLIGATIONS BETWEEN EACH OTHER,
22 THE LAW OF THAT JURISDICTION GOVERNS THOSE RIGHTS AND OBLIGA-
23 TIONS, WHETHER OR NOT THE PAYMENT ORDER OR THE FUNDS TRANSFER
24 BEARS A REASONABLE RELATION TO THAT JURISDICTION.

25 (3) A FUNDS-TRANSFER SYSTEM RULE MAY SELECT THE LAW OF A
26 PARTICULAR JURISDICTION TO GOVERN (i) RIGHTS AND OBLIGATIONS
27 BETWEEN PARTICIPATING BANKS WITH RESPECT TO PAYMENT ORDERS

1 TRANSMITTED OR PROCESSED THROUGH THE SYSTEM, OR (ii) THE RIGHTS
2 AND OBLIGATIONS OF SOME OR ALL PARTIES TO A FUNDS TRANSFER ANY
3 PART OF WHICH IS CARRIED OUT BY MEANS OF THE SYSTEM. A CHOICE OF
4 LAW MADE PURSUANT TO CLAUSE (i) IS BINDING ON PARTICIPATING
5 BANKS. A CHOICE OF LAW MADE PURSUANT TO CLAUSE (ii) IS BINDING
6 ON THE ORIGINATOR, OTHER SENDER, OR A RECEIVING BANK HAVING
7 NOTICE THAT THE FUNDS-TRANSFER SYSTEM MIGHT BE USED IN THE FUNDS
8 TRANSFER AND OF THE CHOICE OF LAW BY THE SYSTEM WHEN THE ORIGINA-
9 TOR, OTHER SENDER, OR RECEIVING BANK ISSUED OR ACCEPTED A PAYMENT
10 ORDER. THE BENEFICIARY OF A FUNDS TRANSFER IS BOUND BY THE
11 CHOICE OF LAW IF, WHEN THE FUNDS TRANSFER IS INITIATED, THE BENE-
12 FICIARY HAS NOTICE THAT THE FUNDS-TRANSFER SYSTEM MIGHT BE USED
13 IN THE FUNDS TRANSFER AND OF THE CHOICE OF LAW BY THE SYSTEM.
14 THE LAW OF A JURISDICTION SELECTED PURSUANT TO THIS SUBSECTION
15 MAY GOVERN, WHETHER OR NOT THAT LAW BEARS A REASONABLE RELATION
16 TO THE MATTER IN ISSUE.

17 (4) IN THE EVENT OF INCONSISTENCY BETWEEN AN AGREEMENT UNDER
18 SUBSECTION (2) AND A CHOICE-OF-LAW RULE UNDER SUBSECTION (3), THE
19 AGREEMENT UNDER SUBSECTION (2) PREVAILS.

20 (5) IF A FUNDS TRANSFER IS MADE BY USE OF MORE THAN 1
21 FUNDS-TRANSFER SYSTEM AND THERE IS INCONSISTENCY BETWEEN
22 CHOICE-OF-LAW RULES OF THE SYSTEMS, THE MATTER IN ISSUE IS GOV-
23 ERNED BY THE LAW OF THE SELECTED JURISDICTION THAT HAS THE MOST
24 SIGNIFICANT RELATIONSHIP TO THE MATTER IN ISSUE.

25 Sec. 9113. A security interest arising solely under the
26 article on sales (article 2) OR THE ARTICLE ON LEASES
27 (ARTICLE 2A) is subject to the provisions of this article except

1 that to the extent that and so long as the debtor does not have
2 or does not lawfully obtain possession of the goods AND THE FOL-
3 LOWING RULES APPLY:

4 (a) ~~no~~ NO security agreement is necessary to make the
5 security interest enforceable. ~~;~~ ~~and~~

6 (b) ~~no~~ NO filing is required to perfect the security
7 interest. ~~;~~ ~~and~~

8 (c) ~~the rights of the secured party on default by the~~
9 ~~debtor are governed by the article on sales (article 2)~~ THE
10 RIGHTS OF THE SECURED PARTY ON DEFAULT BY THE DEBTOR ARE GOVERNED
11 BY THE ARTICLE ON SALES (ARTICLE 2) IN THE CASE OF A SECURITY
12 INTEREST ARISING SOLELY UNDER THAT ARTICLE OR BY THE ARTICLE ON
13 LEASES (ARTICLE 2A) IN THE CASE OF A SECURITY INTEREST ARISING
14 SOLELY UNDER THAT ARTICLE.

15 Section 2. Sections 3120, 3121, 3122, 3208, 3506, 3507,
16 3508, 3509, 3510, 3511, 3606, 3701, 3801, 3802, 3803, 3804, and
17 3805 of Act No. 174 of the Public Acts of 1962, being sections
18 440.3120, 440.3121, 440.3122, 440.3208, 440.3506, 440.3507,
19 440.3508, 440.3509, 440.3510, 440.3511, 440.3606, 440.3701,
20 440.3801, 440.3802, 440.3803, 440.3804, and 440.3805 of the
21 Michigan Compiled Laws, are repealed.

22 Section 3. This amendatory act shall take effect
23 September 30, 1992.