

SUBTITLE 4. PERFORMANCE OF LEASED CONTRACT: REPUDIATED, SUBSTITUTED,  
AND EXCUSED

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

(1) A LEASE CONTRACT IMPOSES AN OBLIGATION ON EACH PARTY THAT THE OTHER'S EXPECTATION OF RECEIVING DUE PERFORMANCE WILL NOT BE IMPAIRED.

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

(3) A REPUDIATION OF THE LEASE CONTRACT OCCURS IF ASSURANCE OF DUE PERFORMANCE ADEQUATE UNDER THE CIRCUMSTANCES OF THE PARTICULAR CASE IS NOT PROVIDED TO THE INSECURE PARTY WITHIN A REASONABLE TIME, NOT TO EXCEED 30 DAYS AFTER RECEIPT OF A DEMAND BY THE OTHER PARTY.

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

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

## 2A-402. ANTICIPATORY REPUDIATION

IF EITHER PARTY REPUDIATES A LEASE CONTRACT WITH RESPECT TO A PERFORMANCE NOT YET DUE UNDER THE LEASE CONTRACT, THE LOSS OF WHICH PERFORMANCE WILL SUBSTANTIALLY IMPAIR THE VALUE OF THE LEASE CONTRACT TO THE OTHER, THE AGGRIEVED PARTY MAY:

(A) FOR A COMMERCIALY REASONABLE TIME, AWAIT RETRACTION OF REPUDIATION AND PERFORMANCE BY THE REPUDIATING PARTY;

(B) MAKE DEMAND PURSUANT TO § 2A-401 AND AWAIT ASSURANCE OF FUTURE PERFORMANCE ADEQUATE UNDER THE CIRCUMSTANCES OF THE PARTICULAR CASE; OR

(C) RESORT TO ANY RIGHT OR REMEDY UPON DEFAULT UNDER THE LEASE CONTRACT OR THIS ARTICLE, EVEN THOUGH THE AGGRIEVED PARTY HAS NOTIFIED THE REPUDIATING PARTY THAT THE AGGRIEVED PARTY WOULD AWAIT THE REPUDIATING PARTY'S PERFORMANCE AND ASSURANCE AND HAS URGED RETRACTION. IN ADDITION, WHETHER OR NOT THE AGGRIEVED PARTY IS PURSUING ONE OF THE FOREGOING REMEDIES, THE AGGRIEVED PARTY MAY SUSPEND PERFORMANCE OR, IF THE AGGRIEVED PARTY IS THE LESSOR, PROCEED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE ON THE LESSOR'S RIGHT TO IDENTIFY GOODS TO THE LEASE CONTRACT NOTWITHSTANDING DEFAULT OR TO SALVAGE UNFINISHED GOODS (§ 2A-524).