

REPORT AND RECOMMENDATIONS
RELATING TO ARTICLE 2A
OF THE UNIFORM COMMERCIAL CODE

Final Report 1989

NEW JERSEY LAW REVISION COMMISSION
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INTRODUCTION AND SUMMARY

The leasing industry has expanded significantly since the 1950's, and now represents a sizable sector of the economy. Despite the growth of personal property leasing in the United States, statutory and case law related to lease transactions has failed to provide a coherent framework for the regulation of leases. Scholars and practitioners alike urged uniform statutory treatment of personal property leasing to achieve certainty in the law.¹

In response to the need to codify leasing law, the Permanent Editorial Board of the Uniform Commercial Code, together with the National Conference of Commissioners on Uniform State Laws (hereinafter referred to as the Conference) and the American Law Institute, promulgated the official text of Article 2A. The new Article comprehensively governs lease contracts of personal property, a subject not previously covered by the Uniform Commercial Code. Lease transactions do not fall within the coverage of Uniform Commercial Code Article 2 on Sales; Article 9 on Secured Transactions applies only to leases intended to create security interests.

Commercial law experts and scholars found several shortcomings in the official text of Article 2A. See, Symposium: Article 2A of the Uniform Commercial Code, 39 Ala.L.Rev. 669 (1988). The California Bar Association formed a committee to study and comment on the new Article. The Association issued a highly regarded study of the new Article which criticized specific sections and proposed amendments. "Report of the Uniform Commercial Code Committee of the Business Law Section of the State Bar of California on Proposed California Commercial Code Division 10 (Article 2A)(Senate Bill 1580, as amended September 11, 1987)" (hereinafter referred to as "California Report"), 39 Ala.L.Rev. 979 (1988). The State of California enacted an amended version of Article 2A substantially based upon the Bar Association report. The State of Oregon enacted this version of Article 2A with some variations.

Thereafter, the State of Massachusetts prepared a bill similar to the California version of Article 2A.² Massachusetts amended the California statute primarily to clarify language and exclude California specific amendments. The bill is pending before the Massachusetts legislature. New York, Illinois and Delaware are considering adoption of the Massachusetts version of Article 2A. Although Minnesota, Nevada, Oklahoma, and South Dakota have enacted the official text, it appears that the Massachusetts version will become the model to other states.

¹ See, Note, Uniform Commercial Code: Article 2A-Leases: Structuring Priorities of Competing Claimants to Leased Property, 73 Minn. L. Rev. 208 (1988).

² Massachusetts House Bill 3341 has passed the Assembly and is pending in the Senate.

The Commission examined the official text of Article 2A, the California statute and the Massachusetts bill. Differences among the three versions, and the effect of Article 2A upon New Jersey law, were identified and analyzed. Since the California and Massachusetts amendments both clarified and improved the official text, the Commission found that the

Massachusetts bill embodied the best version of Article 2A. The Commission therefore recommends that the Massachusetts version of Article 2A with variations for local law be adopted in New Jersey.³

The adoption of Article 2A in New Jersey would displace existing contract and bailment law applied to lease transactions. The "intent of the parties" test, now used to determine whether a transaction is a true lease or creates a security interest, would be abolished. Compare General Electric Credit Corp. v. Castiglione, 142 N.J. Super. 80 (Law Div. 1976) with U.C.C. 1-201(37). Article 2A would also supplant the lessor's damage formula expressed in Locks v. Wade, 36 N.J. Super. 128 (App. Div. 1955). See U.C.C. 2A-528. However, since New Jersey has very little law specific to commercial lease transactions, adoption of Article 2A would not significantly change state law.

The Commission prepared a proposed version of Article 2A incorporating the California and Massachusetts revisions and containing the New Jersey amendments. This version is recommended for adoption. The Commission also prepared comments for every section of the proposed version which differs from the official text of Article 2A and its conforming amendments. The recommended text and comments are set forth below.

³ The amendments specific to New Jersey are found at:

Subsection 103(3)[list of definition of terms made parallel to similar list found in Article 9];

Section 104 [list of New Jersey Certificate of Title statutes];

Section 216 [warranty provision made to conform with parallel provision of Article 2];

Section 304 and Section 305 [minor language change to reflect vocabulary of New Jersey criminal law]; and

Section 309 [conforms vocabulary on fixture filings to that found in 9-313(1)(b)].

The conforming amendments specific to New Jersey are found at:

2-403 [made to conform with language change in 2A-304 and 2A-305], 9-302 [made to conform with 2A-104(1)(b)]; and

9-306 [term "proceeds" to include rent payments under lease contract].