

## 2A-403. RETRACTION OF ANTICIPATORY REPUDIATION

(1) UNTIL THE REPUDIATING PARTY'S NEXT PERFORMANCE IS DUE, THE REPUDIATING PARTY CAN RETRACT THE REPUDIATION UNLESS, SINCE THE REPUDIATION, THE AGGRIEVED PARTY HAS CANCELLED THE LEASE CONTRACT OR MATERIALLY CHANGED THE AGGRIEVED PARTY'S POSITION OR OTHERWISE INDICATED THAT THE AGGRIEVED PARTY CONSIDERS THE REPUDIATION FINAL.

(2) RETRACTION MAY BE BY ANY METHOD THAT CLEARLY INDICATES TO THE AGGRIEVED PARTY THAT THE REPUDIATING PARTY INTENDS TO PERFORM UNDER THE LEASE CONTRACT AND INCLUDES ANY ASSURANCE DEMANDED UNDER § 2A-401.

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

## 2A-404. SUBSTITUTED PERFORMANCE

(1) IF WITHOUT FAULT OF THE LESSEE, THE LESSOR AND THE SUPPLIER, THE AGREED BERTHING, LOADING, OR UNLOADING FACILITIES FAIL OR THE AGREED TYPE OF CARRIER BECOMES UNAVAILABLE OR THE AGREED MANNER OF DELIVERY OTHERWISE BECOMES COMMERCIALY IMPRACTICABLE, BUT A COMMERCIALY REASONABLE SUBSTITUTE IS AVAILABLE, THE SUBSTITUTE PERFORMANCE MUST BE TENDERED AND ACCEPTED.

(2) IF THE AGREED MEANS OR MANNER OF PAYMENT FAILS BECAUSE OF DOMESTIC OR FOREIGN GOVERNMENTAL REGULATION:

(A) THE LESSOR MAY WITHHOLD OR STOP DELIVERY OR CAUSE THE SUPPLIER TO WITHHOLD OR STOP DELIVERY UNLESS THE LESSEE PROVIDES A MEANS OR MANNER OF PAYMENT THAT IS COMMERCIALY A SUBSTANTIAL EQUIVALENT; AND

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

## 2A-405. EXCUSED PERFORMANCE

SUBJECT TO § 2A-404 ON SUBSTITUTED PERFORMANCE, THE FOLLOWING RULES APPLY:

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