

## Know Your Rights: 5 Facts About Usury Laws in Florida

Article

Lowndes

06.20.2023

Usury is the unlawful lending of money at unreasonably high rates of interest. So, what is unreasonable? And what happens if your loan goes beyond that amount?

The answer to the first question depends on several factors, including the size of the loan. The answer to the second question can potentially have a dramatic effect, as a loan that charges high enough interest to violate Florida's usury laws can result in a portion of the loan or the entire loan becoming wholly unenforceable. As a result, the threat of usury can be a powerful negotiating tool in a settlement or workout of a loan.

Here are five things that you need to know about Florida's usury laws, so you are better equipped next time the word comes up.

### 1. What rate can be charged?

The maximum permissible interest rates in Florida are 18% per annum simple interest for loans up to \$500,000.00, and 25% per annum simple interest for loans of \$500,000.00 or more. Note that those figures represent simple interest per full calendar year.

If compound interest is used, or if interest is calculated on a 360-day basis, it is quite possible to violate these limits even with a stated interest rate that remains below 18% or 25%.

### 2. Only interest counts, right?

Determining whether a loan is usurious may seem straightforward at first glance—just compare the stated rate with the maximum rate. However, what the parties call “interest” in their documents is not necessarily everything that counts as interest under Florida's usury laws.

Chief among these additional items are fees that the borrower was charged that do not reflect an actual cost incurred by the lender. Origination fees, extension fees, and late fees are common culprits. If

### Related Attorneys

[Michael S. Provenzale](#)

### Related Expertise

[Banking & Finance](#)

[Distressed Real Estate](#)

such a fee is charged and it counts as “interest,” it must be annualized and added to the stated interest rate to determine if a usury violation exists.

### 3. **How can I avoid these laws?**

First, it’s important to note that there are some types of transactions that have their own regulations, which means the general usury laws of Florida do not apply. For example, federal laws may preempt state usury laws in certain instances, such as those involving federally regulated banks. Additionally, specific industries like car loans, payday loans, and credit cards may have their own rules regarding interest rates.

Another option is the choice of law provision, which allows parties to agree on being governed by the usury laws of a different state. This alternative state may have higher interest rate limits or no limits at all. If there is a reasonable relationship between the transaction and that state, Florida courts generally will enforce the choice of law from the other state.

### 4. **Is it even a loan?**

In some cases, the arrangement may not qualify as a loan under Florida law, which means usury laws may not apply. Factoring, for example, involves the sale of accounts receivable rather than a traditional loan, and different rules may govern such transactions.

Similarly, transactions where the repayment is contingent upon the success of a venture may be excluded, even if the amount eventually repaid might otherwise exceed the applicable interest rate limit.

### 5. **Does a savings clause save everything?**

Including a savings clause in loan documents, while a good idea for a lender, does not necessarily solve a usury problem. Usury savings clauses generally state that the parties do not intend to charge usurious interest, and if the agreement is found to violate usury laws, then any offending interest should be treated instead as a principal payment and the balance of the loan recalculated accordingly.

However, Florida courts have held that such a clause may not be enforceable, and if the lender intended to charge interest in excess of the rate permitted, even a savings clause will not save the loan from being deemed usurious.

Understanding Florida’s usury laws is crucial for lenders and borrowers alike. If you are facing a situation involving potential usury issues, please contact Lowndes’ Creditors Rights & Bankruptcy group.