

Rate of Interest on Past Due Invoices

Hi everyone; client wants to start charging interest on past due payments. I normally warn my clients that I'll charge them 1.5% monthly, or 18% per annum. Is there another interest rate for commercial contracts? Agreement with customer promises payment on the 15th of each month.

Depends on where you are and if there is a contract rate specified. In Texas, if there is no contract or specific rate previously identified, there is a statute that sets what the interest rate is (I think it is six percent per annum - but I have slept several times since I looked at it).

WDJiii

Walter D. James III, Texas

Same in Missouri,

if it is not stated in the contract, then it accrues at 9% annually (state rate).

That is also the rate that judgments accrue interest.

Erin M. Schmidt, Ohio

I think in PA the interest rate is capped at 18% per annum.

John Davidson, Pennsylvania

North Carolina's "legal rate" is 8%. That's the interest rate charged on judgments if no other rate is specified in contract. That's the rate I can charge for late payments on my invoices accrued before I established the practice of putting a 1.5%/month 18%/per annum rate on the invoice.

-Rick

Richard J. Rutledge, Jr., North Carolina

And how many of you actually add that on or collect it?

Greg Zbylut, California

I do. And I'm claiming it in the Small Claim I just filed last week.

I am not a bank. (And I no longer offer terms for that reason.)

-Rick

Richard J. Rutledge, Jr.

If you allow your clients to pay in installments or if you charge interest if they do not pay in full (more than 25 times per year or 5 times per year if secured by a dwelling), make sure you comply with the Truth in Lending Act.

<http://www.fdic.gov/regulations/laws/rules/6500-1400.html>

If it applies to you and you fail to comply, the penalties can be substantial.

Naomi C. Fujimoto, Hawaii

Just got a payment from a client and it covered about 7 months of interest. That's all they owe me is interest charges.

John Davidson

I suppose I should make sure my invoice says Late Charge:

226.4

(a) Definition. The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(c) Charges excluded from the finance charge. The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

When I agree to accept payments, I do not charge late charges or interest; I only charge late charges on overdue invoices for which no arrangements were made in advance. I have not had occasion to address any secured credit arrangements.

-Rick

Richard J. Rutledge, Jr.

5 April 2012 Walter James is correct about Texas. But it is not simple. If the debtor has not signed a contract, it is 6 percent per annum, but only beginning after the first month has passed. Thus, the interest may not be calculated from date the invoice was due. Due date computation is a whole different issue as well. Assume the job/product/service, whatever, was complete on January 31 and the debtor is billed on that date. If debtor does not pay and there was no contract as to interest/finance charge, 1/2 percent interest should not be charged until after February for the month of February. Here are more issues to ponder. What about compounding? If 1/2 percent interest is tacked on for February, is the 1/2 percent interest for March applied to principal and interest through February? What if you blow off any compounding but 13 months pass? Do you compound after passage of that period? I counsel to follow the safe route and not get into usury defense issues. I add, Texas has some Draconian usury penalties. (Not known by many is that Texas is a debtor-friendly state. As mentioned we were reminded by a senior judge at a CLE a few months ago, Texas was founded by deadbeats fleeing their creditors in other states to the east. They made sure that Texas laws would help protect them and versions of those laws remain on the books. Creditors can get paid but there are many obstacles, hoops and

hurdles.) I noticed where one Sezzler mentioned stating an interest rate on his statements. In Texas, you cannot enforce interest rates where the debtor did not sign for it. A classic example of where vendors get caught in this are repair guys/gals and repair shops. Their template forms they use, which may come from an office supply store or they copied from somewhere or is part of a 'system' they pay for, may have finance charge clauses in the 18 percent range, the clause usually appearing near the end and relatively close to the customer signature line. Problem for the vendor is that he/she fails to get the customer's signature but later demands payment using the the 18 percent interest rate. In Texas, there are huge statutory penalties for that. Had a small call many years ago involving an air conditioning repair guy. No signed contract. Vendor sued for about \$55.00. After trial debtor/respondent had a judgment against the vendor for nearly \$1,000. Vendor was a deadbeat and did not pay. We abstracted that judgment and a few years later when he tried to refi his residence a title company called us asking 'where do we send your check?' My engagement agreements with clients have a clearly stated finance charge. I have only charged it once in 25 years to a client who lied to me and later did not pay after monthly billing for well over two years. I waited for over 2 years before suing and then sued. He was off-ticked about being sued for the finance charge. I got paid, with interest, and, in that case also, it was due to recordation of an abstract of judgment. And he did not file a grievance. ---

Rob V. Robertson, Texas

To digress a bit....

When I first got out of law school, I practiced law in Colorado, doing quite a bit of work on commercial loan agreements.

Not sure if it is still the case, but back then, the maximum non- usurious rate was something like 35%. That was always one of my first comments on any agreement that called for default interest "at the maximum rate permitted by law." Really? Do you even know what that rate is?

-Brian

Brian H. Cole, California

Does that apply only if you explicitly allow the client to pay in installments, i.e., from the outset and written into the retainer, or does it also apply if you bill the client, and they say I can't pay this, can I give you \$X per month?

Greg Zbylut
