



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1979 | Issue 1

Article 11

1-1-1979

Business and Professions; Maximum Contractual Interest Rate (USURY)

Darlynne Cassaday

Follow this and additional works at: <https://scholarlycommons.pacific.edu/nlr>



Part of the [Legislation Commons](#)

Recommended Citation

Darlynne Cassaday, *Business and Professions; Maximum Contractual Interest Rate (USURY)*, 1979 U. PAC. L. REV. (1979).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1979/iss1/11>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Pacific Law Journal Review of Selected Nevada Legislative by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

35. NRS 253.150(1).

BUSINESS AND PROFESSIONS; MAXIMUM CONTRACTUAL INTEREST RATE (USURY)

Amends NRS 99.050

Adds to NRS Chapters 99, 645B

SB 26 (Committee on Judiciary); STATS 1979, Ch 498

(Effective May 25, 1979)

Chapter 498 changes the maximum contractual interest rate to 18% per annum, clarifies that agreements for interest in excess of the maximum are void as to all interest, and provides for the computation of annual interest.¹ Chapter 498 adds a section to NRS Chapter 99 defining "interest."² Additionally, Chapter 498 adds a section to NRS Chapter 645B making specific provisions for loans made by or through mortgage companies and secured by mortgages or deeds of trust of real property.³ Those loans are subject to a different maximum contractual interest rate⁴ and interest on those loans excludes mortgage brokerage fees.⁵ The provisions of Chapter 498 do not apply to any contract or note made prior to May 25, 1979, the effective date of the law, regardless of any provision in a contract or note.⁶

Interest Rate

Chapter 498 affects the maximum rate of interest which may be set by a contract; it does not affect the rate of interest applied in the absence of a contract setting the rate of interest.⁷ Furthermore, the rate of interest or time price differential which may be charged by licensed small loan lenders,⁸ thrift companies,⁹ pawn brokers,¹⁰ or installment retailers¹¹ is unaffected. Prior to enactment of Chapter 498, NRS 99.050 set the maximum contractual interest rate at 12% per annum or at a rate based on the lowest daily prime rate at the three largest United States lending institutions (if more than 9%) plus 2.5%, whichever was greater.¹² Chapter 498 provides that the above maximum still applies to loans made by or through mortgage companies and secured by mortgages or deeds of trust of real property.¹³

Void Clause

Prior to enactment of Chapter 498, a contract for a rate of interest in excess of that allowed in NRS 99.050 was void as to "the excessive rate of interest."¹⁴ In Kline v. Robinson, the Nevada Supreme court originally construed this to mean the contract was void as to the "excessive rate of interest over that allowed by the statute."¹⁵ In Pease v. Taylor the court overruled Kline by determining that the legislative intent of NRS 99.050 was to penalize offending lenders with forfeiture of "all interest."¹⁶ Apparently legislative intent was correctly determined in Pease as Chapter 498 amends NRS 99.050 to provide, unequivocally, that a contract for an excessive rate of interest is void as to all interest.¹⁷

By creating a different and separate maximum contractual interest rate provision for mortgage company loans secured by mortgages or trust deeds of real property, Chapter 498 appears to exempt those loans from the void clause of NRS 99.050. The maximum contractual rate of interest for mortgage company loans is now provided for under NRS Chapter 645B¹⁸ instead of NRS 99.050. The void clause of NRS 99.050, per the express language of the section, only applies to the maximum allowable interest rate specified in that section.¹⁹ Sanctions under NRS 645B, including a provision making it a misdemeanor to violate the provisions of the chapter,²⁰ now appear applicable to mortgage company loans for excessive interest.

Definition of Interest

The definition of interest added to NRS Chapter 99 applies to all transactions, unless otherwise specifically provided, not just to interest set by contract.²¹ Chapter 498 defines "interest" generally as "every payment made incident to or as a condition of the extension of credit," and specifically includes, as interest bonuses, fees, premiums, and penalties.²² Interest includes payments to a lender, or with the lender's knowledge, to a third person.²³

The Chapter 498 definition of interest excludes (a) payments for inspecting or appraising security, investigating the borrower's credit, procuring an abstract of title, extending title insurance, and examining an abstract of title or title insurance certificate;²⁴ (b) costs of preparing, executing and recording loan papers;²⁵ (c) charges or premiums for elected insurance coverage;²⁶ and (d) charges or premiums for insurance against loss or damage of the secured property when the charge is adequately disclosed.²⁷

The general definition of interest provided by Chapter 498 is almost identical to the description of finance charges which must be disclosed under Regulation Z of Truth in Lending Act; however, the inclusions and exclusions under each differ.²⁸ For instance, fees for appraisals and credit investigation reports are included as finance charges and therefore must be reported under Regulation Z (except in real property transactions),²⁹ although the same fees are excluded from interest under Chapter 498. On the other hand, Regulation Z provides that a late payment charge is not a finance charge if imposed for unanticipated late payment,³⁰ but Chapter 498 does not specifically address whether late charges are excluded from interest.

Other jurisdictions have rules on whether late charges or prepayment penalties are characterized as interest.³¹ In these jurisdictions the additional payments are often recognized as being entirely within the control of the debtor and the general rule that a debtor may not render a transaction usurious, which otherwise is free from usury, is applied to exclude the payments and charges from interest.³² In some states the courts look further to determine whether as a matter of fact, the charge or penalty was assessed in good faith or was used to avoid the usury laws of the state.³³ Louisiana has repeatedly held that a late charge is made in consideration for the extension of credit and therefore is interest under that state's usury laws.³⁴ In holding contra, California and other states have termed the late charges a penalty.³⁵ Note that Chapter 498 includes penalties as interest and requires only that a charge be incidental to, and not necessarily consideration for, the extension of credit.³⁶

Finally, Chapter 498 sets forth a method of computing interest charges as a percentage of the amount of credit extended, by prorating it over the life of the loan.³⁷ The provision does not appear to provide a method of computation of interest rate for charges not based upon percentages, such as late charges, should such be included as interest.

Darlynne Cassaday

FOOTNOTES

1. 1979 Nev. Stats. ch. 498 (hereinafter "Ch. 498") §2 (amending NRS 99.050).
2. Id. §1 (adding to NRS Chapter 99).

3. Id. §3 (adding to NRS Chapter 645B).
4. Compare Ch. 498 §3 ¶¶1, 2 (adding to NRS Ch. 645B) with Ch. 498 §2 (amending NRS 99.050).
5. Ch. 498 §3 ¶3 (adding to NRS Ch. 645B).
6. Id. §4.
7. Compare NRS 99.050 (as amended by Ch. 498 §2) with NRS 99.040.
8. See NRS 675.290.
9. See NRS 677.670.
10. See NRS 646, 050.
11. See NRS 97.285 and NRS 97.195.
12. 1975 Nev. Stats. ch. 758 §§1, 2, at 1794 (NRS 99.050).
13. Ch. 498 §3 ¶¶1, 2 (adding to NRS Ch. 645B).
14. 1975 Nev. Stats. ch. 758 §3, at 1794 (NRS 99.050).
15. 83 Nev. 244, 250, 428 P.2d 190, 194 (1967).
16. 88 Nev. 287, 294, 496 P.2d 757, 762 (1972).
17. Ch. 498 §2 (amending NRS 99.050).
18. Id. §3 ¶¶1, 2 (adding to NRS Ch. 645B0).
19. Id. §2 (amending NRS 99.050).
20. NRS 645B.230.
21. Ch. 498 §1 (adding to NRS Ch. 99).
22. Id. §1 ¶1 (adding to NRS Ch. 99).
23. Id. See Ch. 498 §3 ¶3 (adding to NRS Ch. 645B) for an exception.
24. Id. §1 ¶2(a), (b) (adding to NRS Ch. 99).
25. Id. §1 ¶2(c) (adding to NRS Ch. 99).
26. Id. §1 ¶2(d)(1) (adding to NRS Ch. 99).
27. Id. §1 ¶2(d)(2) (adding to NRS Ch. 99).
28. Compare id. §1 with 12 C.F.R. §226.4(a)-(e) (1979).
29. Id. §226.4(a)(4) (1979).
30. Id. §226.4(c) (1979).
31. See generally Annot., 63 A.L.R. 3d 50 (1975); Annot., 75 A.L.R. 2d 1265, passim (1961).
32. First Am. Title Ins. & Trust v. Cook, 12 Cal.App.3d 592, 596, 90 Cal.Rptr. 645, 657 (1970) (late payment and default charges); Abbot v. Stevens, 133 Cal.App.2d 242, 247, 284 P.2d 159, 162 (1955) (prepayment penalties).
33. Lew v. Goodfellow Chrysler-Plymouth Inc., 492 P.2d 258, 262 (Wash. Ct. App. 1971).

34. Thrift Funds of Baton Rouge Inc. v. Jones, 274 So.2d 150, 155 (La.Sup.Ct. 1973); cert. den., 414 U.S. 820 (1973).
35. Garret v. Coast and Southern Federal S. & L. Ass'n., 9 Cal.3d 731, 739, 108 Cal.Rptr. 845, 850, 511 P.2d 1197, 1202 (1973).
36. Ch. 498 §1¶1 (adding to NRS Ch. 99).
37. Id. §2 (amending NRS 99.050).

BUSINESS AND PROFESSIONS; TRADEMARKS

Adds to NRS Chapter 600

SB 90 (Committee on Commerce and Labor); STATS 1979, Chy 357

Chapter 357 provides for the registration of trademarks, trade names and service marks and substantially adopts the Model State Trademark Bill.¹

Under the common law, the exclusive right to a trademark emanated from its use and not from its adoption or its registration.² Chapter 357 follows the common law concept by providing that a mark must be used in the state as a prerequisite for registration and that continued use is a requirement for renewal for registration.³ This chapter also expressly provides that a person maintains his rights and remedies under the common law,⁴ such as for "passing off" and unfair competition.⁵

Chapter 357 sets out the application and renewal procedures required to register a trademark in Nevada.⁶ After all the required information has been supplied, the secretary of state will issue a certificate of registration.⁷ This is not a grant of a trademark, but merely gives notice of his claim of ownership to the mark.⁸ The registration provides a public record of marks used in Nevada which can be searched before adopting new marks.⁹ The certificate will be admissible into evidence to raise a "disputable presumption" that the registrant is the owner of the mark.¹⁰

Registration is for a ten year period and marks registered under prior acts, as well as marks registered under this chapter, may be renewed for additional ten year periods.¹¹ Registration may be assigned by an instrument in writing which is recorded with the secretary of state.¹² The assignment is void against any bona fide purchaser unless it is recorded within three months after the assignment or is recorded before the bona fide purchase.¹³ The registration may be canceled if it is