

DARCY AMMERMAN WROTE ABOUT FIVE INTEREST RATE PROVISIONS TO BE AWARE OF PRIOR TO FINANCING

Posted on May 15, 2018

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From January to November 2018, a group of McMillan LLP lawyers will be writing for the [Ottawa Business Journal](#) about issues such as workplace harassment, filing a trademark application and how to ensure you get paid for construction projects. This month, finance lawyer [Darcy Ammerman](#) explains what interest rate provisions to be aware of prior to financing.

Whether you are an individual borrower, a commercial debtor or a lender, below is a summary of some of the most important interest rate provisions to be aware of.

1. Pre-payment

Section 10 of the Interest Act (Canada) allows a borrower who is a natural person to prepay a mortgage loan or hypothec having a term of 5 years or more at any time after the first 5 years, in exchange for 3 months' interest payments (in addition to the principal and interest owing). This right of prepayment protects individuals from being locked into a long-term mortgage at a high interest rate with either no ability to prepay or with prepayment subject to a large penalty. However, the same rule restricts individuals from negotiating their own prepayment terms which may preclude them from securing more favorable long-term financing.

The provision does not apply to commercial borrowers such as corporations, partnerships, certain trusts or unlimited liability companies, allowing such parties to freely negotiate the prepayment terms of their financing arrangements based on factors such as the perceived risk to the lender, ability of the business to succeed, etc. It also allows lenders to offer different pricing models to commercial borrower clients. On the flip side, small businesses without the expertise or bargaining power to negotiate favorable prepayment terms do not have the benefit of the protections afforded to individuals.

2. Criminal Rate of Interest

Parties to a financing need to be aware of the criminal rate of interest which, pursuant to section 347 of the Criminal Code (Canada), is 60% per annum. Although it is rare for a loan agreement to explicitly state a rate this high, courts have taken a liberal approach to interpretation such that certain fees and expenses to be paid

under an agreement may be included in the court's calculation. It is an offence to receive interest payments at a criminal rate or to even enter into an agreement to receive interest at a criminal rate.

Loan agreements commonly include a provision whereby parties agree to reduce the rate of interest (if found by a court to be a criminal rate) to a rate allowable under law. Such a finding remains at the discretion of the court, but if accepted, may save contracting parties from having to enter into a new agreement, and would allow the lender to recover the maximum amount permitted under law.

To read the full article please head to the [Ottawa Business Journal](#).