Late Fees After Maturity or Acceleration

A Lawyer's Musings

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Most commercial borrowers don't blink at late fee provisions in loan documents. But when a loan hits maturity with a large balloon still unpaid, or when the lender accelerates after a default, late fees become far more consequential. In those moments, one line in the promissory note can swing six or seven figures. This article offers a practical tour through the basics of late fees; the controversies over late fees after maturity or acceleration, including how courts have treated them across several jurisdictions;[1] and pragmatic guidance to avoid borrower blowback and litigation risk.

Late fees and default interest do different jobs and should be documented and administered accordingly. In typical mortgage loan transactions, lenders customarily charge a late fee, often five percent of the unpaid installment,[2] to defray administrative costs and the temporary loss of use of funds, and default interest to account for higher risk, opportunity cost, and the additional cost of administering a defaulted loan. Late fees and default interest can both serve a secondary function as deterrents, or, perhaps more directly, as tools to…persuade…borrowers to comply with the loan's requirements.

Two foundational points drive the enforceability of late fees. First, a lender's right to a late fee is purely contractual. No contractual term, no fee. Second, courts across jurisdictions tend to analyze late fees as liquidated damages intended to compensate for the extra work and short-term loss of use caused by a borrower's tardiness; if the purpose or amount is deemed punitive or excessive, it may be ruled an unenforceable penalty. Delaware courts apply this same framework and have held that fees as a penalty are unenforceable as against public policy.[3]

Default interest is its own lane. Courts are generally more comfortable enforcing a default rate (subject to usury and penalty concerns) than stretching a late fee beyond its traditional purpose of addressing a missed periodic installment. Delaware courts are comfortable enforcing default interest provisions in the commercial context, in particular where the loan exceeds $100,000 or where the borrower is not a natural person.[4]

A curious example from another jurisdiction: In New York, a court upheld a default interest provision as an agreement to pay interest rather than a penalty but found criminal usury where the lender attempted to collect both of the ordinary interest of 7.25% and a 24% default rate simultaneously for the same period, resulting in an aggregate interest rate of 31.25%.[5] The lesson from this case is to draft with precision, apply charges consistent with their purpose, and avoid stacking duplicative remedies to avoid double compensation for the same harm.

Regarding late fees specifically, when loan payments are no longer paid at a monthly clip, the "late fee on an installment" framework strains. Two recurring fact patterns drive disputes across jurisdictions.

Once a lender accelerates, the entire indebtedness becomes immediately due. A vague late fee provision, or one that expressly only applies to debt service payments, could be defeated if applied to an accelerated balance. Courts in various jurisdictions have repeatedly held that a borrower no longer owes monthly installments post-acceleration. So, there is no "late installment" on which to levy a fee. Federal cases applying Pennsylvania law, for example, reflect this view: acceleration terminates the borrower's duty to make periodic payments, and lenders may not assess or collect late fees for missed post-acceleration installments.[6] Practically, continuing to send monthly invoices after acceleration invites trouble. It mixes legal positions—demanding the full balance now while invoicing as if nothing changed—and can look like fee manufacturing. Some courts also worry about double recovery where a default rate already compensates the lender for the default period.

Jurisdictions are split when it comes to late fees charged on a balloon payment at maturity, and outcomes turn on drafting and public policy. For lenders, this is where a five percent number can turn into a six- or seven-figure windfall. For borrowers, it can destroy any built-up equity and severely frustrate a refinance. In New York, language matters. A New York trial court held that late fees may not be assessed on a balloon payment due at the end of a mortgage term, but a later New York appellate decision enforced a late fee where the mortgage stated the charge applied to "any payment," construing that phrasing to include a matured balloon. Recent federal decisions applying New York law have also accepted late fees on balloon payments where the language in the loan documents was clear. A Florida federal court applying New York law granted summary judgment to a lender, enforcing a five percent late fee on the unpaid balloon after maturity under a clause covering "any amount due," concluding New York law did not prohibit such a fee and it was not an improper penalty.[7] Connecticut courts are more skeptical. The Connecticut Superior Court has held that a four percent late fee on a balloon payment was "exorbitant" and unenforceable as a penalty where the charge bore no reasonable relationship to actual damages and where the lender was already compensated by default interest.[8]

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On the penalty question, several courts emphasize the need to tie the fee to compensatory aims. It cannot be a penalty or a means to coerce payment or compliance by the borrower.[9] For example, the Arizona Supreme Court reversed a trial court that allowed a $1.4 million maturity late charge, holding the assessment a penalty under liquidated damages principles.[10]

While Delaware's courts famously and reliably defer to reasonable, bargained-for terms between sophisticated parties, in the event of a challenge to a late fee, expect courts to examine how the note defines the late fee trigger—"installment," "payment," or "any amount due"—and whether the fee on a balloon reasonably approximates anticipated administrative or other compensable costs. Where documents are specific and the fee is characterized and supported as compensatory, lenders tend to fare better. Where language is installment-centric or the fee looks coercive or duplicative of default interest, courts—at least in several jurisdictions—tend to push back.

Bankers tend to be practical. They want a smooth closing, a clean payoff letter, a cooperative borrower, and no surprises to the credit committee or the bank's general counsel, so here are some suggestions from a humble commercial real estate and finance attorney to reduce the likelihood of friction and surprises:

Draft for clarity. Avoid ambiguous or vague language. If you intend balloon payments to be subject to late fees, say so. Use "any amount due" rather than "installment" language if the intent is to capture the balloon. Add a separate sentence expressly stating that the late fee applies to the entire unpaid principal due at maturity if not paid when due. This formulation reduces ambiguity. This approach may marginally increase time and expense in loan document negotiations, but clarity is key.[11]

Keep late fees and default interest in their own lanes. Avoid charging both a maturity late fee and default interest for the same period on the same principal without strong contractual and policy support. Even if technically permissible, it can read like a "double dip". Courts analyzing post-acceleration late fees have flagged the risk of double compensation where default interest already compensates for default, rejecting continued late charges after acceleration. If you do assess both, be prepared to articulate separate and distinct harms, and ensure the math and timing do not overlap in a compounding fashion.

Do not send monthly "late notices" after acceleration. Once you accelerate, stop installment billing. Send a single, clear demand with the accelerated amount and applicable default interest. If you must track per diem, label it precisely as default interest and avoid "late fee" line items accruing month-to-month thereafter.

Front-load certainty with respect to a default interest trigger. Make default interest begin upon any event of default, not merely upon acceleration. This reduces pressure to stretch late fees to cover the default period.

Avoid compounding or pyramiding late fees. Do not calculate a late fee on top of unpaid prior late fees or roll unpaid late fees into "principal" for further charges. Compounding reads punitive and invites challenges. Courts have deemed compounding of late charges disproportionate and indicative of a penalty rather than reasonable compensation.

Tone and timing matter. Communicate early before maturity. Highlight the consequences of a missed balloon payment in plain terms. Borrowers dislike surprises just as much as they dislike the fee itself. Where the law is gray, choose consistency over brinksmanship. A settlement discount on a disputed late fee likely saves more than it costs, in both legal and relationship capital.

Consider the forum and governing law. If your platform lends nationally, standardize late fee language but tailor governing law and venue selections to jurisdictions with clear enforcement for your preferred approach. For example, Delaware's strong freedom of contract principles lend themselves nicely to bargained-for contractual terms between sophisticated and represented parties, and New York courts have enforced balloon late fees under broad "any amount due" language, while Connecticut courts have deemed a four percent balloon late fee an unenforceable penalty in at least one instance. For cross-border loans, train closing teams to recognize when a local counsel tweak is needed to mitigate penalty risk.

Audit loan templates early and often. Refreshing late fee and default interest provisions before the next origination cycle can pay dividends later.

Preserve the administrative-cost rationale. Where you intend to charge a maturity late fee, bake in recital-style language that the fee is a reasonable estimate of incremental administrative and opportunity costs of handling delinquency of the final payoff, distinguishing it from ongoing default interest. That framing might not win every case, but it equips you for the liquidated-damages debate.

Late fees are simple until they are not. The moment a loan accelerates or reaches maturity, the simple "five percent on the missed installment" model might collide with the realities of a single lump-sum obligation, and courts, even in Delaware, can be wary of fees that look punitive, coercive or duplicative of default interest. Markets evolve but these principles remain steadfast: precision in paper, discipline in administration, and proportionality in remedies. Lenders who align those three will minimize disputes, preserve yield, and keep their borrower relationships (and reputations in the market) intact when the calendar turns and big numbers come due.

Tony Roustopoulos focuses his practice on matters related to commercial real estate—from simple real estate transactions and financings to complex business matters related to real and personal property. He represents developers, lending institutions, borrowers, landlords, tenants, and other holders of commercial property, whether institutional or family owned, in a broad array of real estate and business matters. Tony's experience includes extensive business, contract, and real property matters, including acquisition, sale, lease, finance, and development of commercial property; asset sales and acquisitions; and numerous different types of property-owning vehicles, from single-purpose entities and operating businesses to complex joint ventures.

Notes:

1- As there is relatively little Delaware jurisprudence directly addressing the enforceability of late fees in commercial loans, this article looks to other jurisdictions for guidance.

2- In fact, Delaware licensed banks extending non-revolving credit to borrowers may not charge more than five percent of the amount owed as a late fee. 5 *Del. C.* §2231(2).

3- Several Delaware cases in different contexts note the liquidated damages versus penalty framework. *See, e.g., Delaware Bay Surgical Services, P.C. v. Swier,* 900 A.2d 646, 650 (Del. 2006) (in the employment context, "the distinction between a penalty and a liquidated damages clause is significant if a provision is considered a penalty, it is void as against public policy . . . ."); *Brazen v. Bell Atlantic Corp.*, 695 A.2d 43 (Del. 1997) (in the merger context, finding that a termination fee was a valid expression of liquidated damages and not a penalty or coercive); *Ingram v. 1101 Stone Associates, LLC*, 2004 WL 691770 (Del. Super. 2004) (rejecting a borrower's claim that default interest and late fees were void as a penalty and granting summary judgment to the lender).

4- *See, Ingram supra.* Relatively long-standing statutes bar certain borrowers from claiming usury as a defense. Section 2301(c) of Title 6 of the Delaware Code bars the defense of usury where the loan amount exceeds $100,000 and a mortgage against the borrower's principal residence does not secure the loan. Likewise, no corporation, limited partnership, statutory trust, business trust or limited liability company may claim usury in any action. 6 Del. C. § 2306.

5- *Trustco Bank NY v. 37 Clark St., Inc.*, 599 N.Y.S.2d 404 (N.Y. 1993).

6- *See, e.g., Security Mut. Life Ins. Co. of NY v. Contemporary Real Estate Assoc.*, 979 F.2d 329 (3d Cir. 1992); *In re Graboyes*, 371 B.R. 113 (Bankr. E.D. Pa. 2007)

7- *BBIG Real Estate, LLC v. Wilmington Trust, National Association*, 2025 WL 24914 (S.D. Fla. 2025).

8- *Velenchik v. First Union Nat. Bank*, 2003 WL 21152967 (Conn. Super. Ct. 2003).

9- Anecdotally, this author has sat across the table from banks and their counsel on several occasions who have all but admitted the purpose of a late fee after maturity is to coerce compliance. Avoid such statements.

10- *Dobson Bay Club II DD, LLC, et al. v. La Sonrisa De Siena, LLC*, 393 P.3d 449 (Az. 2017).

11- In sophisticated commercial loan transactions, borrowers tend to "delete," and lenders tend to accept the deletion of, late fees at maturity or acceleration. Practically, many factors outside of the borrower's control can affec the exact date of a loan refinance, even if the borrower has never missed a payment. And in larger loan transactions, the risk of a last-minute six or seven figure line-item addition to the refinance settlement sheet is simply not tenable. As such, lenders should expect more sophisticated borrowers and their counsel to simply not accept a late fee immediately upon the maturity or acceleration of the loan. Of course, there is always default interest to compensate a lender in such an event.