



Charging interest on unpaid and overdue repair balances.*

Every business faces the difficult situation presented by a customer who fails to pay on time. As a remedy, businesses often charge interest on the customer's unpaid balances for services provided by the business. For equipment dealers, this situation occurs when a customer is expected to pay his repair bill at the time the repair work is completed but does not do so. However, before you charge your customers interest in this situation, you need to be aware of some legal limits that apply and some practical tips to help give you a better chance of legally receiving interest on unpaid and overdue repair balances.

Each state's law differs regarding the interest rate that is allowed to be charged under an agreement or contract. The statutes that set forth the rules are often referred to as "legal interest rate" laws or "usury" laws. Usury is a legal term that simply means charging more interest than is allowed under the state's law. This article briefly summarizes the interest rates that dealers may charge on unpaid and overdue customer repair balances under the legal interest rate and usury laws of the following states: Arizona, California, Colorado, Nevada, Utah and Wyoming.

Arizona

The dealer and customer may agree to **any** interest rate for an unpaid and overdue repair balance as long as it is stated in a repair agreement or work order signed by the dealer and customer. The interest rate in the agreement may be compounded if stated in the agreement.

On the other hand, if **no** interest rate is stated in the agreement, a dealer can charge no more than 10% interest **per year** from the date the customer's outstanding balance becomes due and the interest should not be compounded.

California

The dealer and customer may agree to **any** interest rate for an unpaid and overdue repair balance as long as it is stated in a repair agreement or work order signed by the dealer and customer. The interest rate in the agreement may be compounded if stated in the agreement.

California law is somewhat ambiguous as to whether a dealer may charge interest on an outstanding repair balance if the repair agreement does not specify a rate. Based on a California Supreme Court ruling interpreting the application of the California usury law, we do not believe that California specifically gives a dealer the right to collect interest for an overdue repair bill if the agreement does not state the interest rate. As a result, it is critical for dealers to provide for the collection of interest in their agreements.

Colorado

If the repair agreement or work order signed by the dealer and customer states the interest rate to be charged on unpaid and overdue repair balances, the dealer may charge the interest rate stated. However, Colorado caps the interest rate that the dealer and customer can agree to in an agreement. The dealer and customer may agree to an interest rate of up to 45% per year on a customer's outstanding repair balance and the interest rate may be compounded if stated in the agreement.

If **no** interest rate is specified in the agreement, the dealer may charge 8% per year compounded annually.

Nevada

The dealer and customer may agree to **any** interest rate for an unpaid and overdue repair balance as long as it is stated in a repair agreement or work order signed by the dealer and customer. The interest rate in the agreement may be compounded if stated in the agreement.

However, if an interest rate is **not** stated in the agreement, the dealer may charge an interest rate equal to the current prime rate of the largest bank in Nevada (as determined by the Commissioner of Financial Institutions), plus 2%. As of December 2010, the prime rate is 3.25%. Therefore, currently, a dealer may charge 5.25% on outstanding balances from the time the unpaid amounts become due and the interest may not be compounded. The interest rate charged on outstanding balances must be adjusted each January 1 and July 1 according to the Commissioner's determination of the Prime Interest Rate. To see the most current rates as determined by the Commissioner, go to <http://www.fid.state.nv.us> and click on "Prime Interest Rate".

Utah

The dealer and customer may agree to **any** interest rate for an unpaid and overdue repair balance as long as it is stated in a repair agreement or work order signed by the dealer and customer. The interest rate in the agreement may be compounded if stated in the agreement.

If the agreement between the dealer and customer does **not** state an interest rate, the dealer may charge a 10% per year interest rate for an outstanding customer repair balance and the interest may not be compounded.

Wyoming

The dealer and customer may agree to **any** interest rate for an unpaid and overdue repair balance as long as it is stated in a repair agreement or work order signed by the dealer and customer. The interest rate in the agreement may be compounded if stated in the agreement.

If the agreement does **not** state an interest rate, the dealer may charge an interest rate of 7% per year and the interest may not be compounded.

Questions and Dealer Practice Tips:

- What if my dealership is in one state and the customer is in another state? If the interest rate is specified in the agreement, the dealer should generally charge the interest rate stated in the agreement. If the agreement does not state the interest rate, the dealer should be conservative and charge whichever state's allowable interest rate is **lower**.
- What if a repair agreement states that the interest rate for outstanding customer balances is 5% per year, but the state would have allowed a 10% per year rate had the written agreement been silent? Can the dealer charge 10%? No. The dealer may only charge a 5% interest rate per year. The agreement controls, even if the state would have allowed a higher rate if the repair agreement did not specify an interest rate.
- Dealer Practice Tip #1: If the repair agreement does not provide for interest, send a written demand for payment first to warn the customer of the interest charges and when interest will start accruing. Sending a written demand or notice may give the customer an incentive to make prompt payment and will also create written record of the communications between you and the customer if legal action becomes necessary in the future (e.g., enforcement of a repair lien).
- Dealer Practice Tip #2: Set an interest rate in customer repair agreements. A dealer's repair agreements should include provisions stating reasonable interest rates on unpaid and overdue customer repair balances. Including these provisions will eliminate confusion and generally allow you to collect a higher rate of interest than allowed under state law.

* Please note that this article does not address the various federal and state laws and regulations relating to cash loans, consumer loans, or consumer credit transactions, including any loans, open accounts or advances to individuals for personal, family or household purposes. This article focuses exclusively on the interest rate a dealer is allowed to charge on outstanding customer repair balances under a repair agreement or work order for balances expected to be paid once the work is complete. This article serves only as a general summary of the law relating to interest rates for dealer repairs and repair agreements; please consult an attorney for questions relating to your specific situation.