

Late Fees on a Balloon Payment Due at Maturity

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January 21, 2025

In 2025, an estimated \$600 billion in commercial real estate loans are scheduled to mature. While the interest rate environment has stabilized somewhat over the past year, rates have not fallen as far as borrowers had hoped, and expenses, particularly insurance, continue to increase exponentially. Given the foregoing, it is likely that a nonnegligible percentage of borrowers may not be able to refinance commercial real estate loans on or before their maturity dates.

Virtually all commercial real estate loan documents contain a provision providing that if a payment is not timely, a late fee is imposed in connection with that late payment – typically 5% of the amount of the payment that was due. A 5% late fee imposed on a delinquent monthly installment payment does not usually cause much controversy.

However, the vast majority of commercial mortgage loans have terms of five or ten years and do not fully amortize during that term, resulting in a substantial balloon payment due to the lender on the maturity date. So, does the late fee provision apply to a balloon payment due on the maturity date of the loan? The answer turns on the specific language of the late fee provision, and state law governing the loan documents.

Recently, the District Court for the Southern District of Florida, applying New York law, granted a lender's motion for summary judgment, holding that the lender was entitled to impose and collect a late fee on the balloon payment due on the maturity date of the loan. In [*BBIG Real Estate, LLC v. Wilmington Trust, National Association*](#), 2025 WL 242914 (S.D. Fla. Jan. 9, 2025) (*BBIG*), the borrower failed to pay the loan in full by the maturity date and had requested a payoff quote for a refinancing closing date after the maturity date. The payoff quote contained a late fee of 5% of the balloon payment due on the maturity date. The borrower questioned the late fee, but ultimately closed on its refinancing transaction and paid the late fee. Thereafter, however, the borrower sued the lender to recover the late fee. The borrower claimed the lender had improperly imposed the late fee based on the language of the loan agreement at issue and argued the 5% late fee imposed on the balloon payment was an unenforceable penalty.

The late fee provision in *BBIG* read as follows:

If any amount due under the Loan Documents is not paid on the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of (i) five percent (5.00%) of such unpaid sum or (ii) the maximum amount permitted by Legal Requirements in order to defray the expenses incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment.

The borrower argued that the lender breached the loan agreement by failing to calculate "the maximum amount permitted by Legal Requirements," including a calculation of expenses incurred by the lender, which the borrower asserted would be much less than 5%. The lender countered by noting that the plain language of the late fee provision only required the imposition of an amount less than 5% of a delinquent payment if applicable law (in this case, New York) prohibited the imposition of a 5% late fee.

The Court agreed with the lender, noting that there is nothing in New York law that prohibited this imposition of a 5% late fee on a balloon amount owed at maturity, and that it was not an improper penalty. It cited several cases decided under New York law in accord with its conclusion. (*Wells Fargo Bank Nat'l Ass'n, et al. v. 366 Realty LLC*, 2024 WL 1265097 (E.D.N.Y. 2024); *Wells Fargo Bank, N.A. v. 5615 Northern LLC*, 2023 WL 7394340 (S.D.N.Y. 2023); *Dominic Schindler Holding, AG v. Moore*, No. 20CIV4407RPKVMS, 2022 WL 987428 (E.D.N.Y. 2022)). While acknowledging this was a harsh result, the Court confirmed that it "may not relieve a defaulting debtor from the consequences of its own act merely because the results are harsh."

The *BBIG* decision confirms that when loan documents provide for the imposition of a late fee on any delinquent payment, a lender may properly impose and collect the late fee in addition to the balloon amount due at maturity, unless applicable law would prohibit it. Lenders and their counsel should carefully review late fee provisions in loan documents when providing a payoff quote. If the late fee language and applicable law permits the imposition of a late fee on the balloon payment owed at maturity and the loan is not being paid on or before the maturity date, a late fee on the balloon amount due at maturity may be properly imposed.

If you have questions or concerns regarding this alert, please contact [Zachary J. Bancroft](#), [Rebecca Reynolds](#), or any member of Baker Donelson's [Bankruptcy and Commercial Restructuring](#) Group.