Legal Analysis of Veterans' Disability Benefit Buy-Out Schemes

Summary

Three contracts (labeled B, C, and D) were forwarded to NCLC by Congressman Lane Evans, Ranking Democratic Member of the House Committee on Veterans' Affairs, for review of possible consumer law claims. In these contracts, veterans received a lump-sum cash payment in exchange for their future disability benefits, and in all of contracts, the lump-sum payments were at a grossly discounted rate as compared to the value of the future benefits. On average, the pay-outs equaled $0.35 on the dollar. A calculation of the annual percentage rates (APRs) of the transactions revealed very high effective interest rates, ranging from 39% to 106%. These transactions, which constitute an assignment of the veterans' future benefits, are particularly egregious in light of the intended purpose of those benefits – to compensate for the veterans' impaired earning capacity[1] and to "provide reasonable and adequate compensation for disabled veterans and their families."[2]

An analysis of the contracts and applicable federal law reveals several possible claims the veterans might raise. First and foremost, the contracts should be considered void and unenforceable because they contain an illegal assignment of veterans' benefits. Although a finding that the contracts are null and void would render further claims moot, the veterans also have viable claims under other state and federal consumer laws.

Overview of the contracts

The structure of the transactions varied somewhat from contract to contract. Below is a detailed summary of each of the three reviewed transactions, labeled Contract B, C, and D.[3]

Contract B

Contract B requires the veteran to open a deposit account into which his benefits will be deposited. The contract further requires that the account be structured so that all withdrawals must be made with two of three possible signatures (those being the veteran and two representatives of the lender), thereby ensuring that the veteran will not be able to withdraw benefits from this deposit account without action by the lender. Under the terms of the contract,

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[1] H.R. Rep. No. 96-1155, p.4 (1980), U.S. Code Cong. & Admin. News 1980, p. 3307. See also Rose v. Rose, 107 S. Ct. 2029 (1987).

[2] S. Rep. No. 98-604, p. 24 (1984), U.S. Code. Cong. & Admin. News 1984, pp. 4479, 4488.

[3] No "Contract A" was forwarded to NCLC for review.

no money is remitted to the veteran each month from the deposited benefits.

Although the numbers are not entirely clear from the contract and veteran's letter reviewed by NCLC, the following shows an approximate break-down of the loan terms.

- Veteran receives an up-front payment of approximately $66,100 from the lender.[4]
- Veteran pays back a total of $302,928 in 120 payments over 10 years.[5]
- The APR on this loan is 49%.
- The veteran's letter states that this money will be used to consolidate the veteran's debts, including a home equity loan.

Contract C

Contract C creates at least one, and up to three, loans. For each loan, the veteran is required to have his benefits of $2,036 per month delivered to the lender for a period of 18 months. The lender then remits the difference of the benefit amount ($2,036) and the monthly loan payment ($678.48) for a total back to the veteran of $1,357.52 per month. To ensure that the benefit payments go directly to the lender, the veteran is required to direct the Department of Veterans Affairs to deliver all future payments to the lender's address or to a specified bank account. According to the terms of the contract, the breakdown of the loans, including the two possible additional loans, are as follows.

Initial Loan

- Veteran receives $6,000.
- Veteran pays back a total of $12, 212.64 over 18 months.[6]
- The APR on this loan is 106%.

Second Loan

- Veteran receives $6,500.
- Veteran pays back a total of $12,212.64 over 18 months.[7]

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[4] This figure is $80,000 (rough figure stated in letter), minus $10,000 broker's fee and $3,900 for credit life insurance.

[5] This figure is equal to 96 monthly payments of $2,195, plus $110 per month "management fee," plus $439 "pooled investment fee" (which may be returned to the veteran after completion of the loan obligation), for a total of $2744. In addition, there are 24 monthly payments of $1,097, plus the $110 and $439 per month fees, for a total of $1,646.

[6] This figure equals 18 monthly payments of $678.48.

[7] Id.

- The APR on this loan is 92%.

Third Loan

- Veteran receives $7,000.
- Veteran pays back a total of $12,212.64 over 18 months.[8]
- The APR on this loan is 80%.

Contract D

Contract D contains less information than the other two examples, and without contacting the veteran directly for more information it is impossible to determine the arrangement for transferring the veteran's monthly benefit payment to the lender. The contract creates one loan with an addendum documenting an additional loaned amount.

Original Terms

- Veteran receives $12,250.
- The veteran agrees to make 35 monthly payments of $500, which totals a repayment of $17,500.
- The APR on the original terms of the loan is 40%.

Amended Terms (10 months into repayment)

- 10 months into repayment, the veteran receives an additional $5,000.[9]
- The veteran agrees to increase the remaining 25 payments on the original terms by $50 per payment, as well as to extend repayment by an additional 24 months.

Total Cost of Loan to Veteran, Including the Amended Terms

- Veteran pays back a total of $31,950 over 59 months.
- The APR, including the amended terms is 39%.

A contract for a lump-sum payment in exchange for the right to receive future benefits constitutes an assignment.

The legal definition of an assignment is "the transfer of rights or property."[10] The three contracts reviewed by NCLC demonstrate assignments by the veterans of their respective rights to receive future benefits. In Contract B, the veteran was required to open a separate bank account into which all future benefit funds would be deposited and over which the lender had

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[8] Id.

[9] This figure is equal to $6,000 minus $1,000 "processing fee."

[10] Black's Law Dictionary (7th ed. 1999).

control, by means of the withdrawal limitations placed on the account.[11]

In Contract C, the veteran clearly transferred to the lender his rights in the future benefits by agreeing to:

> tell the Department of Veterans [sic] Affairs (1) to mail or wire all future payments of the Assigned Assets to the address and or account [sic] We suggest and to change the mailing address of the primary and contingent beneficiaries to that address; (2) to ignore all future requests, demands, and instructions received from You [the veteran] (or any other person besides us [the lender]) about the Assigned Assets; and (3) to accept and honor future requests, instructions, and orders about the Assigned Assets only from Us.

Although the third contract, Contract D, does not specify the arrangement for payment (whether by special bank account for direct deposit of benefits or by notice to the Department), the contract is an assignment of the veteran's benefits. The contract refers to the transaction as an "assignment of the retirement (VA) benefits proceeds checks" and specifically names the protected benefits as the source of the loan payments.

These contracts are void and unenforceable because they contain an illegal assignment of veterans' benefits.

Federal law, 38 U.S.C. § 5301(a), prohibits the assignment of veterans' benefits: "Payments of benefits due or to become due under any law administered by the Secretary *shall not be assignable* except to the extent specifically authorized by law..." (emphasis added). An illegal contract is generally void and unenforceable,[12] and federal courts will not enforce a contract that seriously offends law or public policy.[13] The Supreme Court has held that

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[11] The account could only be accessed by two of three possible signatures. The three possible signatures were the veteran and two of the lender's agent, thereby effectively cutting off the veteran's access to the account.

[12] Swavely v. Freeway Ford Truck Sales, Inc., 700 N.E.2d 181 (Ill. App. 1 Dist. 1998) ("there is no exception to the rule that a contract which violates a valid statute is void, as the law cannot enforce a contract which it prohibits"). See also Dornerger v. Metropolitan Life Ins. Co., 961 F. Supp. 506 (S.D.N.Y. 1997); Davis v. Pennzoil Co., 438 Pa. 194, 264 A.2d 597 (1970); Blick v. Marks, Stokes, & Harrison, 234 Va. 60, 360 S.E.2d 345 (1987); Bowen Electric Co. v. Foley, 194 Va. 92, 72 S.E. 2d 388 (1952), Restatement (Second) of Contracts §§ 178, 179 (1981).

[13] See Kaiser Steel Corp. v. Mullins, 455 U.S. 72, 77, 102 S.Ct. 851, 70 L.Ed.2d 833 (1982).

> a federal court has the duty to determine whether a contract violates federal law before enforcing it. 'The power of the federal courts to enforce the terms of a private agreement is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in. . .federal statutes. . . Where the enforcement of private agreements would be violative of that policy it is the obligation of courts to refrain from such exertions of judicial power.'[14]

A contract that assigns a veteran's right to receive future benefits offends public policy because it is a direct violation of federal law prohibiting such assignments.[15] As such, the contract is *void ab initio*. Black's Law Dictionary defines *void ab initio* as "null from the beginning, as from the first moment when a contract is entered into"[16] and defines null as "having no legal effect; without binding force."[17] If a contract is held to be *void ab initio*, it has no legal effect and cannot be enforced. A person responsible for an illegal contract should be denied restitution for any benefits already conferred upon the consumer under the contract.[18]

The assignment contracts reviewed by NCLC violate key disclosure provisions in the federal Truth in Lending Act.

The federal Truth in Lending Act[19] was adopted in 1968 with the twin goals of providing (1) a set of standardized rules for determining accurately the genuine cost of credit, and (2) a mandatory, uniform set of consumer credit disclosures concerning cost and terms which a

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[14] Id. at 83-84, 102 S.Ct. 851 (citing Hurd v. Hodge, 334 U.S. 24, 34-35, 68 S.Ct. 847, 92 L.Ed. 1187 (1948) (footnotes omitted)).

[15] The fact that the funds in Contract B are first placed into a bank account, then later accessed by the lender, does not affect this analysis. The Supreme Court has held that veterans' benefit funds retain their protected (and therefore unassignable) status despite being deposited into a bank account. Porter v. Aetna Cas. & Sur. Co., 82 S.Ct. 1231 (1962); Lawrence v. Shaw, 57 S.Ct. 443 (1937).

[16] Black's Law Dictionary (7th ed. 1999).

[17] Id.

[18] Restatement of Restitution § 140 (1939).

[19] 15 U.S.C. § 1601 et seq.

borrower could use to make an informed choice in the marketplace.[20] The Truth in Lending Act (TILA) applies to an individual or business that offers or extends credit when four conditions are met:

- the credit is offered or extended to consumers;
- the offering or extension of credit is done regularly;
- the credit is subject to a finance charge or is payable by a written agreement in more than four installments; and
- the credit is primarily for personal, family, household purposes.[21]

Additionally, TILA applies only for extensions of credit in an amount of not more than $25,000, unless the credit grants a security interest in the consumer's home. With the possible exception of the second requirement (proof of which would require more information about the lenders), all three of the contracts reviewed by NCLC are covered by TILA. TILA claims may give rise to actual damages, individual statutory damages, rescission, and attorney fees.

In an attempt to avoid the application of TILA, the reviewed contracts do not refer to the transactions as extensions of credit. Contract C goes so far as to state:

> You [the veteran] have valid reasons for *selling* Your interest in the Assigned Assets *rather than obtaining a loan* with the Assigned Assets as collateral, and You agree that the transaction set forth in the Agreement *is not a loan or other financing transaction.* (emphasis added).

Contract B also attempts to disguise the transaction. The first page of the "Annuity Utilization Plan" in Contract B contains the statement: "This is not a loan."

Devices to evade TILA are not new, and the incentives for creditors to do this vary. The lenders in the contracts probably did not want the veterans to know that the effective cost of the loans were almost 40%, 50%, and over 100% APR, respectively. In all three examples, particularly evidenced by Contract B (veteran paid back $302,928 for the $66,100 borrowed), the lenders also wanted to obscure the fact that the total of the payments was outrageous in relation to the value given.

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[20] See generally Mourning v. Family Publications Service, Inc., 411 U.S. 356, 364-65, 93 S.Ct. 1652, 36 L.E.2d 318 (1973).

[21] Reg. Z § 226.1(c)(1). See, e.g., Beezley v. Fremont Indemnity Co., 804 F.2d 530 (9th Cir. 1986), cert denied, 480 U.S. 949 (1987).

However, in TILA cases, as is true with consumer protection laws generally,[22] courts look to the true nature of a transaction to determine what laws apply; "the substance rather than the form of credit transactions should be examined in cases arising under [TILA]."[23] Because TILA is a remedial statute designed to protect consumers, its coverage must be liberally construed in favor of consumers.[24] This is particularly appropriate in light of the purposes of TILA – to deter the predatory extension of credit and to aid the unsophisticated consumer.[25]

Once a transaction is properly uncovered as an extension of consumer credit, it must be examined for compliance with the required TILA disclosures. These disclosures exist for the purpose of allowing consumers to make informed decisions about the cost of credit and must be made before the credit is extended. Among other disclosures, the statement must contain the "Amount Financed," which may be thought of as a rough equivalent of the principal amount of a loan or other credit; the "Finance Charge," which can be considered the total dollar cost of the loan or other credit; and the "Annual Percentage Rate" (APR), which is a simple interest calculation of the cost of the credit. All of these figures must be calculated according to detailed regulations promulgated by the Federal Reserve Board.[26]

Of the three contracts reviewed by NCLC, <u>not one of them contained these TILA disclosures</u>. This means that the veterans who entered into the contracts did not have the benefit of specific information the federal government has deemed critical to permit consumers to make informed credit decisions.

It is important to note that although Contract B was for more than $25,000, TILA applies because of the security interest granted in the veteran's home.[27] A homeowner has a right under TILA to rescind most transactions for which the home is taken as collateral when the loan was not used to purchase the home. The rescission right is absolute for three days, but the three days

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[22] See generally National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges § 9.2.1.5 (2nd ed. 2000 and supp.); National Consumer Law Center, Unfair and Deceptive Acts and Practices § 5.1.8.1 (5th ed. 2001 and supp.).

[23] Hickman v. Cliff Peck Chevrolet, 566 F.2d 44, 45 (8th Cir. 1977), citing Joseph v. Norman's Health Club, Inc., 532 F.2d 86, 90 (8th Cir. 1976). See also Adams v. Plaza Finance Co., 168 F.3d 932 (7th Cir. 1999); Edwards v. Your Credit, Inc., 148 F.3d 427 (5th Cir. 1998).

[24] See e.g., Turner v. E-Z Check Cashing, 35 F. Supp. 2d 1042 (M.D. Tenn. 1999).

[25] Id.

[26] Reg. Z § 226.6.

[27] Reg. Z § 226.3(b).

do not begin to run until all of the material disclosures are correctly provided to the consumer.

In a rescindable transaction, the creditor must deliver to each homeowner two copies of a notice of the right to rescind and one copy of the TILA disclosure statement containing the material disclosures.[28] The rescission disclosure must be in clear and conspicuous type on a separate document the consumer can keep[29] and must disclose the security interest in the home, the right to rescind, how to exercise that right, the effect of rescission, and the date the rescission period ends. The required material disclosures include the APR, finance charge, amount financed, total of payments, and the payment schedule. Although specifically required for this type of transaction, rescission disclosures (or *any* disclosures) were not made to the veteran in Contract B.

Noncompliance with the rescission requirements is a violation of TILA which gives rise to a claim for actual and statutory damages, as well as the continuing right to rescind. Rescission triggers the automatic invalidation of all lender fees, interest, and other expenses. Moreover, despite the general rule that there can be only one statutory penalty even where there were multiple violations, the damages for a violation of the rescission provision are separate and may be imposed *in addition* to any potential damages for disclosure violations.

The veterans' benefit assignment contracts also violate state unfair and deceptive acts and practices laws.

The transactions evidenced by the contracts reviewed by NCLC appear to violate state unfair and deceptive acts and practices (UDAP) statutes.UDAP statutes are applied expansively and liberally to protect consumers and to reach innovative forms of marketplace misconduct. As with other types of patently unfair and one-sided loan situations, the environment surrounding these loans secured by future benefits is ripe for unfair and deceptive acts by the lenders. At least one veteran whose contract was reviewed by NCLC complained that terms of the agreement were misrepresented during negotiations or altered in the final contract, and all three contracts showed on their face evidence of deception by proclaiming the transactions were not loans[30] or were not assignments made in violation of federal law.

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[28] 15 U.S.C. § 1635(a), Reg. Z §§ 226.15(b), 226.23(b); Official Staff Commentary §§ 226.15(b)-1; 226.23(b)-1.

[29] Reg. Z §§ 226.5(a)(1); 226.17(a)(1). See also 15 U.S.C. § 1635(a); Reg. Z §§ 226.15(b), 226.23(b) (required information concerning notice of right to rescind must be given clearly and conspicuously); Re. Z § 226.23(b) (disclosure must be on separate document).

[30] Contract C states: "...You [the veteran] agree that the transaction set forth in this Agreement is not a loan or other financing transaction."

State UDAP statutes typically divide violations into two categories. First, most statutes have an enumerated list (sometimes referred to as the statute's "laundry list") of prohibited deceptive acts. If a lender engages in any of these enumerated acts, there is a *per se* or automatic violation of the UDAP statute. Creditors and other potential defendants usually settle quickly on terms favorable to the consumer if they are caught violating such a clear-cut standard.

Some state laws include violations of other state and federal laws as *per se* violations. For example, a federal court interpreting the Hawaii UDAP statute found that a Truth in Lending Act (TILA) violation was a *per se* UDAP violation.[31] Findings like the one in Hawaii mean that all state and federal laws intended to protect the public will incorporate UDAP remedies– often including attorney fees, treble damages, or statutory damages. Indeed, a violation of a statute that does not create a private cause of action, such as the anti-assignment clause in 18 U.S.C. § 5301, can be the basis of a UDAP claim.[32] These extra remedies are particularly helpful in challenging violations of credit legislation where private remedies are often limited or do not include attorney fees, such as TILA. In all three contracts, the violation of the federal prohibition against assignment of veterans' benefits and the failure to provide TILA disclosures and rescission rights may constitute *per se* UDAP violations.

In addition to these *per se* violations of state UDAP statutes, a practice can violate the law based upon an allegation that the practice is simply unfair or deceptive, even though the practice does not violate a specific statutory provision. Courts consistently hold that a statute's itemized prohibitions do not exhaust or limit the practices that can violate a UDAP statute and that other acts may be unfair or deceptive.[33]

Many courts interpreting fairness under state UDAP statutes use what is known as the

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[31] Burnett v. Ala Moana Pawn Shop, Clearinghouse No. 46,771 (D. Haw. 1991), aff'd, 3 F.3d 1261 (9th Cir. 1993). But see Riopta v. Amresco Residential Mortgage Corp., 101 F. Supp. 2d 1326 (D. Haw. 1999).

[32] Yale New Haven Hosp. Inc. v. Mitchell, 662 A.2d 178 (Conn. Super. Ct. 1995).

[33] Garland v. Mobil Oil Corp., 340 F. Supp. 1095 (N.D. Ill. 1972); State v. O'Neill Investigation, Inc., 609 P.2d 520 (Alaska 1980); Commonwealth v. Monumental Properties, Inc., 459 Pa. 450, 329 A.2d 812 (1974). However, the Texas UDAP laundry list is exclusive. A private plaintiff cannot sue under the broad prohibition of false, misleading, and deceptive acts and practices. Griffith v. Levi Strauss & Co., 85 F.3d 185 (5th Cir. 1996). The broad prohibition language is enforceable only by the attorney general. Tex. Bus. & Com. Code §§ 17.46(a) & 17.47.

"S&H" standard of unfairness[34] for determining when a practice is unfair. The following criteria are used to determine if a practice is unfair:

- Whether the practice offends public policy. Is it within at least the penumbra of some common law, statutory, or other established concept of unfairness?
- Whether the practice is immoral, unethical, oppressive, or unscrupulous.
- Whether the practice causes substantial harm to the consumer.

Applying these criteria, the statutory violations of TILA and the federal prohibition against the assignment of veterans' benefits are certainly within the penumbra of a statutory concept of unfairness and offending the public policy embodied in the laws violated. The Connecticut supreme court has followed this analysis in concluding that TILA and usury violations constitute UDAP violations, relying heavily on the legislative history of those statutes.[35] Remedies for unfair or deceptive practices vary from state to state; however, they generally provide for more than actual damages, as well as attorney's fees.[36]

Unconscionable methods, acts, or practices are also violations of many state UDAP laws. The excessively one-sided transactions and grossly discounted rates found in the assignment contracts reviewed by NCLC are arguably unconscionable. The veterans in those contracts averaged payments of 3.5 times the amount financed, at APRs ranging from 39%, to 49%, to over 106%.

The veterans in at least two of the contracts reviewed also may have usury claims.

Assignment contracts B and C also may be subject to state law usury claims.[37] In the traditional usury case there are four elements which a borrower must establish:

- the existence of a loan or forebearance;
- an absolute obligation to repay the principal;

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[34] Federal Trade Commission v. Sperry & Hutchinson Co., 405 U.S. 233, 92 S.Ct. 898, 31 L.Ed.2d 170 (1972). See also National Consumer Law Center, Unfair and Deceptive Acts and Practices § 4.3 (5th ed. 2001 and supp.).

[35] Cheshire Mortgage Services, Inc. v. Montes, 223 Conn. 80, 612 A.2d 1130 (1992).

[36] See generally National Consumer Law Center, Unfair and Deceptive Acts and Practices Chapter 8 (5th ed. 2001 and supp.).

[37] Of the three contracts reviewed by NCLC, Contract D is the only one that probably does not have a viable usury claim. Colorado state law governs Contract D and caps interest rates at 45%, while the interest rate in this loan is 39%. Co. Rev. Stat. § 5-12-103.

- the usurious intent of the lender; and
- an interest overcharge.

Although the lenders in the reviewed contracts may have attempted to circumvent the first element by characterizing the transactions as other than a loan, courts will examine substance over form to determine the true nature of the transaction. The remaining three elements most likely are met by Contracts B and C. The veterans have an absolute obligation to repay the principal of the loan, which is accomplished through an assignment of their rights to receive future benefits. The "usurious intent" of a creditor is determined on the face of the contract, by exposure of hidden interest charges and fees, or by providing subjective intent.[38] The last element, the interest overcharge, depends upon state law.
For purposes of examining a transaction for usury violations, it is the state law definitions of interest and interest rates that are dispositive.[39]

Contract C is governed by Florida law. The usury cap in Florida is 18%, and loans made above that interest rate are unenforceable.[40] The veteran in Contract C has at least one, and up to three, loans with interest rates ranging from 80% to 106% – well over the state law usury cap.

Because Contract B provides for a lien on the veteran's house, the question of usury becomes much more complicated. Determining whether there is a claim for usury in Contract B will turn on the questions of *who* made the loan, *how* the loan was made, and *the priority* of the lien on the veteran's house provided by the loan. Federal law may preempt the application of a state usury cap in this case. Even if it does not, state law sets a usury cap only in certain situations. State laws limiting the maximum interest charge for loans are generally preempted by a federal law if the loans are secured by first mortgages on homes.[41] As Contract B is secured by

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[38] National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges § 10.3 (2d ed. 2000 and supp.).

[39] Although the calculations for APR under the federal Truth in Lending Act and interest under state law differ, in the three examples reviewed by NCLC, the APR and the interest on the loans are equivalent.

[40] Fl. St. § 516.02.

[41] Depository Institutions Deregulation and Monetary Control Act of 1980 (DIDMCA). Pub. L. No. 96-221, 94 Stat. 161 (1980) codified throughout Title 12 of the U.S. Code, e.g., § 1831d(a) (state commercial banks); § 1463(g) (savings and loans); § 1785(g) (federally insured credit unions); § 1735f-7a (mortgages). Thirteen states opted out of this preemption by the deadline. California did not opt out. See also National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges § 3.5.3 (2d ed. 2000 and supp.).

the veteran's home, if the loan is a first lien and California law applies,[42] then there may be no interest rate ceiling applicable to this loan.

Federal preemption applies only to first mortgages and to certain types of lenders, and more information about the transaction in Contract B is required to determine if a maximum allowed interest rate has been exceeded. If Contract B does in fact grant a first mortgage (as opposed to a junior lien), and if the lender is of the type required to preempt state law,[43] then there is no maximum interest rate cap imposed on that loan. Significantly, lenders claiming preemption carry the burden of proving that the federal law applies to a particular transaction.[44]

The veteran in Contract B may have a usury claim if the loan does not grant a first lien or the lender does not qualify for preemption. In that case, California law will determine the maximum allowable interest the lender can charge for that loan. California state law places an outside limit on interest at 10%,[45] except for loans "made or arranged by any person licensed as a real estate broker by the State of California, and secured . . . by liens on real property."[46] As a result of this extremely broad exception to the general usury statute in California, the veteran in Contract B will have a claim only if the broker in the loan was not licensed by the state of California.[47] However, more information would be required about the broker to determine if that party's involvement in the loan removes the transaction from the general usury interest cap. If the party acting as broker was not in fact licensed by the state of California, then the contract term of 49% interest far exceeds the general usury limit of 10%.

The remedies available to victims of illegal, usurious overcharges are determined by individual state statutes. Often a statute will declare a usurious loan void as to all or part of the interest, while leaving the principal obligation in tact. Frequently, these statutes impose penalties on the creditor involved, in the form of an award to the borrower of double to triple the interest of the usurious portion of the interest. Some statutes declare usurious loans to be completely void and may require the return of all monies paid. Equitable remedies also may be available.

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[42] Contract B states that the law of California will apply to the transaction.

[43] For a discussion of qualifying lenders, see National Consumer Law Center, The Cost of Credit: Regulation and Legal Challenges § 3.5.3.3 (2d ed. 2000 and supp.).

[44]See In re Russell, 72 B.R. 855 (Bankr. E.D. Pa. 1987); Pacific Mortgage & Investment Group, Ltd. V. Horn, 100 Md. App. 311, 641 A.2d 913 (1994); Fidelity Fin. Services v. Hicks, 574 N.E.2d 15 (Ill. App. Ct. 1991).

[45] Ca Const. Art. 15 § 1

[46] Cal. Civ. Code § 1916.1.

[47] The contract includes roughly $10,000 as a broker's fee.