

**Florida's Banking Statute of Fraud section § 687.0304**  
**weeds out frivolous borrower claims**

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Florida's Banking Statute of Frauds was enacted in order to curb a 1980's trend of increasing lender liability lawsuits. The enactment of this statute has made it difficult for Plaintiff's to maintain tort based claims that might otherwise flow from the written loan documents. Typically, such claims involve oral promises pertaining to breach of an oral commitment to lend, breach of an oral agreement to refinance an existing loan, breach of an oral agreement to forbear from enforcing contractual remedies or breach of an oral agreement to take certain actions in connection with the underlying loan. By requiring that loan documents be in writing for a borrower to sue a lender on those types of claims, the Banking Statute of Frauds prevents borrowers from pursuing claims based upon oral representations or understandings. The effect of the Banking Statute of Frauds is to bar tort claims that otherwise may have been colorable under common law.

Florida's Banking Statute of Frauds, codified as Florida Statutes § 687.0304(2), provides that "[a] debtor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor and debtor." Section 687.0304 "was an act to protect lenders from liability for actions or statements a lender might make in the context of counseling or negotiating with the borrower which the borrower construes as an agreement, the subsequent violation of which is actionable by the lender." *Brenowitz v. Cent. Nat'l Bank*, 597 So.2d 340, 342 (Fla. 2d DCA 1992). Florida's Banking Statute of Frauds governing credit agreements serves to bar any claims that are premised on the same conduct and representations that were insufficient to form a contract and are merely derivative of the unsuccessful contract claim. *Fla. Stat.* § 687.0304; *Dixon v. Countrywide Home Loans, Inc.*, 710 F. Supp. 2d 1325 (S.D. Fla. 2010). Put simply, under the Banking Statute of Frauds, parol evidence is not admissible to contradict the unequivocal written terms of a credit agreement. *Silver v. Countrywide Home Loans, Inc.*, 760 F. Supp. 2d 1330, 1342 (S.D. Fla. 2011). Accordingly, any claim "that is either directly or indirectly based on alleged oral representations not contained in" a written credit agreement fails as a matter of law. *Id.*

The Banking Statute of Frauds is designed to prevent the enforcement of unfounded fraudulent claims by requiring credit agreements to be evidenced by writing. Its purposes are to intercept the frequency and success of actions based on nothing more than loose verbal statements or mere innuendoes and to prevent perjuries. In operation, the Banking Statute of Frauds prevents lenders from being enmeshed in and harassed by claimed oral promises made in the course of negotiations not ending in credit agreements reduced to writing. Its primary object is to prevent the setting up of pretended agreements and then supporting them by perjury in swearing contests where one person's word is pitted against that of another. *DK Arena, Inc. v. EB Acquisitions I, LLC*, 31 So. 3d 313 (Fla. 4<sup>th</sup> DCA 2010).

The statute is strictly construed to prevent the fraud it was designed to correct, and as long as it can be made to effectuate this purpose, Florida courts are reluctant to take cases from its protection. *See e.g. Wolfson v. Moye*, 214 So. 2d 629 (Fla. 3<sup>rd</sup> DCA 1968). Thus, Credit agreements not in writing or not evidenced by a note or memorandum signed by the party sought to be charged as required by the Banking Statute of Frauds are not void but merely voidable and unenforceable.

Though the statute's primary purpose is to protect lenders from lender liability claims brought by borrowers regarding oral promises not encompassed within the loan documents, the statute benefits the borrowers by requiring credit agreements to be in writing, expressly preserving the sanctity of the negotiations of the parties and terms of the transaction. To date, the statute has served its primary purpose of restricting borrowers' ability to sue creditors. Although Florida courts have prevented borrowers from using oral misrepresentations or equitable claims offensively through the Banking Statute of Frauds, they have preserved the ability to assert such theories as affirmative defenses to lender claims of loan default.

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