



California Corporate & Securities Law

The “Usury Permit” – Fact Or Fiction?

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The California Constitution covers many things – everything from the right of privacy (Art. I, Sec. 1) to the rate of interest that may be imposed on a loan or forbearance (Art. XV).

Occasionally, I’m asked about how to obtain a “usury permit” from the Department of Corporations. In fact, the legislature has inserted several exemptions from the constitutional usury limitations into the Corporate Securities Law of 1968. This is possible because the Constitution’s usury limitations don’t apply to any class of persons authorized by statute. The CSL’s usury exemptions can be found in Corporations Code Sections 25116, 25117 and 25118.

Section 25116 is the source of the so-called “usury permit”. That section exempts an evidence of indebtedness (as well as the purchases thereof) when it is issued pursuant to qualification as either an issuer transaction or a recapitalization or reorganization transaction. The exemption is conditioned upon compliance by the issuer and purchaser with any conditions upon qualification imposed by the Commissioner of Corporations. Because of the concern that some debt instruments may be determined not to be securities (a subject for another day), the statute provides that the exemption applies regardless of whether a court later determines the evidence of indebtedness to be a security.

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