Loan documents often contain provisions that require borrowers to pay an additional fee, known as a make-whole or prepayment premium, to the extent that they pay their debt in full prior to the loan's maturity date. This additional fee is intended to "compensate the lender [for] the loss of anticipated interest" or "yield that was expected at the time they made their loans."

To determine whether the additional fee is collectible in bankruptcy, courts typically conduct a multi-pronged inquiry into whether it (1) has been triggered by the loan agreement, (2) is enforceable under applicable state law, and (3) is allowed under applicable bankruptcy law. Despite the consistent framework, the Second, Third, Fifth and Ninth Circuits have, in some instances, issued conflicting decisions on the enforceability of prepayment premiums. However, generally, most courts will enforce prepayment premiums in bankruptcy if the loan document explicitly requires it or if the borrower is deemed a solvent chapter 11 debtor.

Click here to read the full article in the *American Bankruptcy Journal*.

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