

Colorado Revised Statutes
Title 5 Consumer Credit Code
Article 12 Interest, General Provisions

5-12-101. Legal rate of interest.

If there is no agreement or provision of law for a different rate, the interest on money shall be at the rate of eight percent per annum, compounded annually.

Source: L. 71: R&RE, p. 852, § 1. C.R.S. 1963: § 73-12-101. L. 75: Entire section amended, p. 257, § 1, effective July 1. L. 79: Entire section amended, p. 315, § 1, effective June 20.

Cross references: For interest on damages for personal injuries, see § 13-21-101.

COLORADO COMMENT

The provisions of this Article 12 are derived in part from Article 1 of Chapter 73, C.R.S. 1963, in effect prior to this Code.

ANNOTATION

Law reviews. For article, "Notice to Attorneys", see 12 Dicta 196 (1935). For article, "A Decade of Colorado Law: Conflict of Laws, Security, "Colorado Interest Law", see 34 Dicta 398 (1957). For article, "The Revolution in Consumer Credit Legislation", see 45 Den. L.J. 679 (1968). For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986). For article, "Recovery of Interest: Parts I and II", see 18 Colo. Law. 1063 and 1307 (1989).

Annotator's note. Since § 5-12-101 is similar to repealed § 73-1-1, C.R.S. 1963, CSA, C. 88, § 1, and laws antecedent to CSA, C. 88, § 1, relevant cases construing those provisions have been included in the annotations to this section.

Change in legal rate does not affect preexisting contracts. *Salazar v. Taylor*, 18 Colo. 538, 33 P. 369 (1893); *Bankers Trust Co. v. Int'l. Trust Co.*, 108 Colo. 15, 113 P.2d 656 (1941).

Interest awarded. *M.L.G. Corp. v. Davis*, 672 P.2d 1019 (Colo. App. 1983).

This section does not apply to a situation covered by the prompt payment statute. To the extent there is a conflict, the more specific prompt payment statute prevails over this section. *New Design Constr. Co. v. Hamon Contractors, Inc.*, ___ P.3d ___ (Colo. App. 2008).

Applied in *Farmers State Bank v. Klein*, 159 Colo. 165, 410 P.2d 632 (1966); *Equal Emp. Opportunity Comm'n v. Safeway Stores, Inc.*, 634 F.2d 1273 (10th Cir. 1980); *Martinez v. Continental Enterprises*, 730 P.2d 308 (Colo. 1986); *Hansen v. Lederman*, 759 P.2d 810 (Colo. App. 1988); *Colo. Springs v. Timberlane Assoc.*, 807 P.2d 1177 (Colo. App. 1990).

5-12-102. Statutory interest.

(1) Except as provided in section 13-21-101, C.R.S., when there is no agreement as to the rate thereof, creditors shall receive interest as follows:

(a) When money or property has been wrongfully withheld, interest shall be an amount which fully recognizes the gain or benefit realized by the person withholding such money or property from the date of wrongful withholding to the date of payment or to the date judgment is entered, whichever first occurs; or, at the election of the claimant,

(b) Interest shall be at the rate of eight percent per annum compounded annually for all moneys or the value of all property after they are

wrongfully withheld or after they become due to the date of payment or to the date judgment is entered, whichever first occurs.

(2) When there is no agreement as to the rate thereof, creditors shall be allowed to receive interest at the rate of eight percent per annum compounded annually for all moneys after they become due on any bill, bond, promissory note, or other instrument of writing, or money due on mutual settlement of accounts from the date of such settlement and on money due on account from the date when the same became due.

(3) Interest shall be allowed as provided in subsection (1) of this section even if the amount is unliquidated at the time of wrongful withholding or at the time when due.

(4) Except as provided in section 5-12-106, creditors shall be allowed to receive interest on any judgment recovered before any court authorized to enter the same within this state from the date of entering said judgment until satisfaction thereof is made either:

(a) At the rate specified in a contract or instrument in writing which provides for payment of interest at a specified rate until the obligation is paid; except that if the contract or instrument provides for a variable rate, at the rate in effect under the contract or instrument on the date judgment enters; or

(b) In all other cases where no rate is specified, at the rate of eight percent per annum compounded annually.

Source: L. 71: R&RE, p. 852, § 1. C.R.S. 1963: § 73-12-102. L. 75: Entire section amended, p. 257, § 2, effective July 1. L. 79: Entire section R&RE, p. 315, § 2, effective June 20. L. 82: (4) amended, p. 227, § 2, effective January 1, 1983. L. 83: (4) amended, p. 394, § 1, effective July 1. L. 84: (4)(a) amended, p. 286, § 1, effective July 1.

RECENT ANNOTATIONS

Prejudgment interest awarded from date of judgment quieting title to disputed property. Prejudgment interest on royalties from oil and gas extraction from disputed property awarded only from the date plaintiff won judgment quieting title in the property and not from earlier date on which plaintiff asserted an ownership claim to the property. Royalty payments could not be considered to be wrongfully withheld until plaintiff's ownership of the property was no longer in dispute. *Beaver Creek Ranch, L.P. v. Gordman Leverich Ltd. Liab. Ltd. P'ship*, ___ P.3d ___, 2009 Colo. App. Lexis 1009 (Colo. App.), rehearing denied, 2009 Colo. App. Lexis 1320 (Ct. App. 2009).

Prejudgment interest under subsection (1) of this section is recoverable in an insurer's equitable contribution action under former § 10-4-707 (3) of the Colorado no-fault insurance act. *Safeco Ins. Co v. Westport Ins. Corp.*, 214 P.3d 1078 (Colo. App. 2009).

ANNOTATION

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I. GENERAL CONSIDERATION.

Law reviews. For note, "Curious Origin of the Compound Interest Rule in Colorado", see 1 Rocky Mt. L. Rev. 148 (1929). For note, "Interest as Damages in Colorado", see 16 Rocky Mt. L. Rev. 162 (1944). For note, "Interest as Damages in Colorado", see 28 Dicta 285 (1951). For note, "Colorado Interest Law", see 34 Dicta 398 (1957). For article, "One Year Review of Contracts", see 36 Dicta 19 (1959). For article, "One Year Review of Contracts", see 37 Dicta 1 (1960). For article, "One Year Review of Contracts", see 39 Dicta 161 (1962). For article, "A Creditor's Right to Interest in Colorado", see 35 U. Colo. L. Rev. 190 (1963). For article, "The Revolution in Consumer Credit Legislation", see 45 Den. L.J. 679 (1968). For article, "Rates of Interest on State and Federal Court Judgments: An Update", see 12 Colo. Law. 446 (1983). For article, "Colorado's Prejudgment Interest Statute: Potential for Market Rate Interest", see 12 Colo. Law. 1605 (1983). For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 Colo. Law. 990 (1986). For article, "Let the Builder-Vendor Beware: Defenses and Damages in Home Builder Litigation -- Part II", see 16 Colo. Law. 629 (1987). For article, "Recovery of Interest: Parts I and II", see 18 Colo. Law. 1063 and 1307 (1989). For article, "Prejudgment Interest for Wrongful Withholding in Constructive Trust Remedy Actions", see 23 Colo. Law. 351 (1994).

Annotator's note. Since § 5-12-102 is similar to repealed § 73-1-2, C.R.S. 1963, § 73-1-2, CRS 53, CSA, C. 88, § 2, and laws antecedent to CSA, C. 88, § 2, relevant cases construing those provisions have been included in the annotations to this section.

Interest is a compensation for the use of money for its detention. *City of Denver v. Barber Asphalt Paving Co.*, 141 F. 69 (8th Cir. 1905).

Recovery of that compensation may be pursued as prejudgment interest in accordance with the terms of this section, or in circumstances in which statutory interest would not be available, it may be sought as moratory interest which recognizes interest as a part of compensatory damages. *Scognamiglio v. Olsen*, 795 P.2d 1357 (Colo. App. 1990).

In historical perspective. The exaction or taking of interest or compensation for the use of money was regarded as usurious, whether moderate or excessive, both in biblical times and by the early common law prior to the reign of Henry VIII. It seems to have been held by the church that the taking of interest was actually sinful as against the laws of God and morality and by the courts that it was unlawful on the theory of the classical and medieval economists from the time of Aristotle that money was only a medium of exchange and naturally barren and unproductive. By the 16th century the gap between religious theory and commercial practice had been further narrowed, and the new protestant ethics regarded only excessive exactions as usury. In the United States, the courts have always viewed the allowance of interest with greater favor than have the courts in England. The English common law has never been suited to the conditions existing in this country, and the American courts have never doubted the right to interest where it has been expressly contracted for, or where an undertaking to pay interest may be implied from the usages of trade. *Stone v. Currigan*, 138 Colo. 442, 334 P.2d 740 (1959).

In Colorado. Interest having become recognized as lawful and just compensation for the use of money rightfully belonging to another, the first session of the general assembly of the territory of Colorado adopted

an interest statute, which, with only slight changes, now appears as § 5-12-102. *Stone v. Currigan*, 138 Colo. 442, 334 P.2d 740 (1959).

Hence, interest is a creature of statute. *Hendrie v. Bd. of County Comm'rs*, 153 Colo. 432, 387 P.2d 266 (1963).

Where no agreement. Interest, when there is no agreement therefor, is a matter of statute. *In re Estate of Granberry*, 30 Colo. App. 590, 498 P.2d 960 (1972).

The right to interest, absent an independent agreement, is statutory and is limited to those circumstances enumerated in the statute. *Messler v. Phillips*, 867 P.2d 128 (Colo. App. 1993); *Indian Mountain Metro. Recreation & Park Dist. v. J.P. Campbell & Assocs.*, 921 P.2d 65 (Colo. App. 1996); *Bd. of County Comm'rs of Dolores County v. Shell Western E & P, Inc.*, 12 P.3d 1219 (Colo. App. 2000).

Where there is no "judgment" entered in a "court" to which subsection (4) could apply, a claim for post-judgment interest pursuant to subsection (4) is properly rejected. *Bd. of County Comm'rs of Dolores County v. Shell Western E & P, Inc.*, 12 P.3d 1219 (Colo. App. 2000).

Interest is the compensation allowed by law, or fixed by the parties, for the use, detention, or forbearance of money or its equivalent. *Stone v. Currigan*, 138 Colo. 442, 334 P.2d 740 (1959).

This section is intended to provide for award of interest from the time plaintiffs were wronged. *Combined Com. Corp. v. Pub. Serv. Co.*, 865 P.2d 893 (Colo. App. 1993); *Porter Constr. Servs. v. Ehrhardt, Keefe, Steiner, & Hottman, P.C.*, 131 P.3d 1115 (Colo. App. 2005).

Purpose of statutory interest is to discourage delaying payment of a claim. *Mesa Sand & Gravel v. Landfill, Inc.*, 776 P.2d 362 (Colo. 1989); *Michaelson v. Michaelson*, 884 P.2d 695 (Colo. 1994); *Stansbury v. Comm'r of Internal Rev.*, 102 F.3d 1088 (10th Cir. 1996); *Scott v. Comm'r of Internal Rev.*, 236 F.3d 1239 (10th Cir. 2001); *Ross v. Old Republic Ins. Co.*, 134 P.3d 505 (Colo. App. 2006), *aff'd on other grounds*, 180 P.3d 427 (Colo. 2008).

This section to be strictly construed. *Isbill Associates, Inc. v. City & County of Denver*, 666 P.2d 1117 (Colo. App. 1983); *Mesa Sand & Gravel v. Landfill, Inc.*, 776 P.2d 362 (Colo. 1989); *Michaelson v. Michaelson*, 884 P.2d 695 (Colo. 1994).

The appellate court's authority to determine interest is exclusive. While the appellate court may, of course, remand to the trial court for a determination of the proper statutory interest, the trial court, without such an instruction, lacks jurisdiction to enter any amount of interest not stated in the mandate. *Pet, Inc. v. Goldberg*, 37 Colo. App. 257, 547 P.2d 943 (1975).

Law of the forum governs. Colorado follows a minority rule of conflict of laws in determining what law applies to interest questions, and Colorado holds that it is the law of the forum which governs. *Davis Cattle Co. v. Great W. Sugar Co.*, 393 F. Supp. 1165 (D. Colo. 1975), *aff'd*, 544 F.2d 436 (10th Cir. 1976), *cert. denied*, 429 U.S. 1094, 97 S. Ct. 1109, 51 L. Ed. 541 (1977).

The question of entitlement to interest is to be answered under Colorado law, even as to parties who are citizens of other states and whose farms are in other states. *Davis Cattle Co. v. Great W. Sugar Co.*, 393 F. Supp.

1165 (D. Colo. 1975), *aff'd*, 544 F.2d 436 (10th Cir. 1976), cert. denied, 429 U.S. 1094, 97 S. Ct. 1109, 51 L. Ed. 2d 541 (1977).

The proper method of attacking an appellate court's instructions as to interest is to petition for amendment or recall of the mandate. Such a procedure is available in Colorado. *Pet, Inc. v. Goldberg*, 37 Colo. App. 257, 547 P.2d 943 (1975).

Relationship of section to C.A.R. 37. While this section states the circumstances wherein interest shall be allowed to a creditor or on a judgment, C.A.R. 37 requires and empowers the appellate court to make the determination of interest to be allowed, if any, and to include instructions concerning the entry of such interest in its mandate when a judgment is modified or reversed with directions for entry of a money judgment. *Pet, Inc. v. Goldberg*, 37 Colo. App. 257, 547 P.2d 943 (1975).

No conflict with § 38-1-116. There is no conflict between § 38-1-116, which provides for six percent interest in an eminent domain proceeding from the date of possession until the date the commission's award is filed with the court, and this section, pertaining to interest thereafter, since once the amount of the valuation award has been ascertained by the commission, the result is like any other judgment. *Denver Urban Renewal Auth. v. Hayutin*, 40 Colo. App. 559, 583 P.2d 296 (1978).

Interest questions in a suit on a contract brought in federal court are to be determined by state law, whether jurisdiction is founded on a federal question or diversity of citizenship. *Rocky Mt. Tool & Mach. Co. v. Tecon Corp.*, 371 F.2d 589 (10th Cir. 1966).

This section affects rate of interest held not to be paid on the redemption of land. *O'Mahoney v. People ex rel. Stone*, 24 Colo. 524, 52 P. 796 (1898).

This section does not apply to the collection of interest on overdue taxes because there must be an agreement expressing mutuality of contract before this section applies, and a contractual relationship clearly is not involved in a claim for overdue taxes. *State Farm Mut. Auto. Ins. Co. v. Temple*, 176 Colo. 537, 491 P.2d 1371 (1971).

For the "unreasonable and vexatious delay in payment" clause contained in earlier provision, see *Craig v. Chandler*, 6 Colo. 543 (1883); *Corson v. Neatheny*, 9 Colo. 212, 11 P. 82 (1886); *Keys v. Morrison*, 3 Colo. App. 441, 34 P. 259 (1893); *Young v. Kimber*, 44 Colo. 448, 98 P. 1132, 28 L.R.A. 626 (1909).

This section allows pre-judgment interest on a judgment against the state because nothing in this section precludes such interest. Plaintiff, a public officer, was, therefore, entitled to pre-judgment interest on the underpaid portion of his accumulated vacation leave. *Wilkerson v. State*, 830 P.2d 1121 (Colo. App. 1992).

Awarding interest is compensation for actual, pecuniary damage suffered by the victim incidental to the defendant's crime of fraudulently obtaining funds because the victim loses the use of the money involved. Interest is awarded as restitution to compensate the victim for such loss of use, it is not intended to reimburse the victim for interest that otherwise would have been earned on the funds. *Valenzuela v. People*, 893 P.2d 97 (Colo. 1995).

An insurer is liable for prejudgment interest pursuant to this section for underinsured motorist coverage from the date of the insurer's wrongful refusal or failure to pay, notwithstanding a policy provision that provided that liability and the amount of damages were to be determined by

agreement of the parties or by arbitration. *Bowen v. Farmers Ins. Exch.*, 929 P.2d 14 (Colo. App. 1996).

This section governs award of prejudgment interest in non-personal injury cases only. Liability of insurer in personal-injury case is normally governed by § 13-21-101 and case law under that section treating prejudgment interest as an element of compensatory damages, subject to limitations on coverage stated in policy. Award of prejudgment interest under this section is not appropriate unless insurer breached its contract with insured or otherwise wrongfully withheld amounts due. *Old Republic Ins. Co. v. Ross*, 180 P.3d 427 (Colo. 2008).

Plaintiff is entitled to recover prejudgment interest from date of injury until issuance of initial arbitration award but only to the limits of the uninsured motorist policy. *Swan v. Am. Family Mut. Ins. Co.*, 8 P.3d 546 (Colo. App. 2000).

Applied in *Big O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co.*, 408 F. Supp. 1219 (D. Colo. 1976); *Alexander Dawson, Inc. v. Sage Creek Canyon Co.*, 37 Colo. App. 339, 546 P.2d 969 (1976); *Weather Eng'r & Mfg., Inc. v. Pinon Springs Condominiums, Inc.*, 192 Colo. 495, 563 P.2d 346 (1977); *Gundelach v. Gollehon*, 42 Colo. App. 437, 598 P.2d 521 (1979); *A-1 Plumbing & Heating Co. v. Thirteenth St. Corp.*, 44 Colo. App. 13, 616 P.2d 141 (Colo. App. 1980); *M & T, Inc. v. Fuel Resources Dev. Co.*, 518 F. Supp. 285 (D. Colo. 1981); *In re Lucas*, 631 P.2d 1175 (Colo. App. 1981); *Surplus Elecs. Corp. v. Gallin*, 653 P.2d 752 (Colo. App. 1982); *Acme Delivery Serv., Inc. v. Samsonite Corp.*, 663 P.2d 621 (Colo. 1983); *E. Larimer County Water v. Centric Corp.*, 693 P.2d 1019 (Colo. App. 1984); *Weston v. Mincomp Corp.*, 698 P.2d 274 (Colo. App. 1985); *Autocon Indus., Inc. v. W. States Constr. Co., Inc.*, 728 P.2d 374 (Colo. App. 1986); *Nat'l Sur. Corp. v. Citizens State Bank*, 734 P.2d 663 (Colo. App. 1986); *Recreational Dev. Co. v. Am. Const.*, 749 P.2d 1002 (Colo. App. 1987); *Britvar v. Schainuck*, 791 P.2d 1183 (Colo. App. 1989); *Arguelles v. Ridgeway*, 827 P.2d 553 (Colo. App. 1991); *Flexisystems, Inc. v. Am. Standards Testing Bureau, Inc.*, 847 P.2d 207 (Colo. App. 1992); *Smith v. Mehaffy*, 30 P.3d 727 (Colo. App. 2000); *Atmel Corp. v. Vitesse Semiconductor Corp.*, 160 P.3d 347 (Colo. App. 2007).

II. ALLOWANCE OF INTEREST.

A. In General.

The right to interest, independent of an agreement to pay it, is statutory. *Weaver v. First Nat'l Bank*, 138 Colo. 83, 330 P.2d 142 (1958); *York Plumbing & Heating Co. v. Groussman Inv. Co.*, 166 Colo. 382, 443 P.2d 986 (1968).

The subject of interest is governed by statute, and in no case where interest is not so provided is it recoverable, unless specially contracted for, except in the nature of damages, where a refusal to pay has been wilful, wrongful, fraudulent, or without reasonable cause. Since this section points out in detail and especially enumerates the cases in which interest is allowable, assuming to cover the whole field, it is not recoverable in any case not thus expressly enumerated, or included by fair implication. When the general assembly assumed to declare in what cases interest could be allowed, under the rule that the expression of the one is the exclusion of another, no interest can be allowed in any case not specified. *Cobb v. Stratton's Estate*, 56 Colo. 278, 138 P. 35 (1914).

The right to interest, independent of an agreement to pay it, is statutory; it is not given by the common law. However, there has always been a

statute providing for interest, enumerating the cases in which it might be allowed and this section is substantially the same as the older statutes. *Greeley, S. L. & Pac. Ry. v. Yount*, 7 Colo. App. 189, 42 P. 1023 (1895); *Bd. of Comm'rs v. Wheeler*, 39 Colo. 207, 89 P. 50 (1907); *Bankers Trust Co. v. Int'l Trust Co.*, 108 Colo. 15, 113 P.2d 656 (1941).

In the absence of agreement, interest can be recovered only in the cases mentioned in this section. *Keys v. Morrison*, 3 Colo. App. 441, 34 P. 259 (1893); *Hanauer v. Bartels*, 2 Colo. 514 (1875); *Greeley, S. L. & Pac. Ry. v. Yount*, 7 Colo. App. 189, 42 P. 1023 (1895), distinguishing *Machette v. Wanless*, 2 Colo. 169 (1873); *Omaha & Grant Smelting & Ref. Co. v. Tabor*, 13 Colo. 41, 21 P. 925 (1889) (recovery allowed as damages and not as interest, the legal rate of interest being merely used as a convenient way of arriving at their amount); *Morris v. Redak*, 124 Colo. 27, 234 P.2d 908 (1951); *Mitton v. Granite State Fire Ins. Co.*, 196 F.2d 988 (10th Cir. 1952); *Hunter v. Wilson*, 147 Colo. 36, 362 P.2d 553 (1961).

In the absence of any contractual provision, prejudgment interest can only be recovered in the cases enumerated in this section. *Denver Ass'n for Retarded Children v. Sch. Dist. No. 1*, 188 Colo. 310, 535 P.2d 200 (1975).

This section enumerates the cases in which interest may be awarded. *Weaver v. First Nat'l Bank*, 138 Colo. 83, 330 P.2d 142 (1958). This section allows interest on money which is due and owing, regardless of whether the money was wrongfully withheld. *In re Tri Systems Consulting & Design, Inc.*, 115 Bankr. 279 (Bankr. D. Colo. 1990).

The right to recover interest is purely a legal one, and in no sense an equitable right. *Denver, S. P. & P. R. R. v. Conway*, 8 Colo. 1, 5 P. 142 (1884); *DeRemer v. Parker*, 19 Colo. 242, 34 P. 980 (1893); *Pettit v. Thalheimer*, 3 Colo. App. 355, 33 P. 277 (1893); *Patten v. Am. Nat'l Bank*, 15 Colo. App. 479, 63 P. 424 (1900).

1979 amendment applicable to judgments entered after effective date. Subsection (1)(a), which became effective July 1, 1979, applies to any judgments entered after that date, even where the withholding of the property in question was prior to the effective date of the amendment. *Great W. Sugar Co. v. N. Natural Gas Co.*, 661 P.2d 684 (Colo. App. 1982), *aff'd sub nom. KN Energy, Inc. v. Great W. Sugar Co.*, 698 P.2d 769 (Colo. 1985), *cert. denied*, 472 U.S. 1022, 105 S. Ct. 3489, 87 L. Ed. 2d 623 (1985).

The intent of subsection (1)(a) was to correct the situation in which a wrongdoer would stall settlement or judgment in order to reap the benefit of having use of money or property which was producing more profit for him than the statutory interest rate he would eventually have to pay. Any benefit resulting from the wrongful withholding was intended to be enjoyed not by the wrongdoer, but by the injured party. *Great W. Sugar Co. v. KN Energy, Inc.*, 778 P.2d 272 (Colo. App. 1989).

Section requires an award of prejudgment interest in a rescission action, regardless of whether the issue was raised at trial or evidence was presented on the issue. *Kennedy v. Gillam Dev. Corp.*, 80 P.3d 927 (Colo. App. 2003).

Prejudgment and postjudgment interest should have been awarded in homeowner's successful action against tenants for past-due rent and damage to premises. *Butler v. Lembeck*, 182 P.3d 1185 (Colo. App. 2007).

A wrongful withholding need not involve actual fraud or be tortious in nature. Section 38-10-117 provides that any conveyance made with the intent to hinder, delay, or defraud creditors is fraudulent. *Stansbury v. Comm'r of Internal Rev.*, 102 F.3d 1088 (10th Cir. 1996).

Corporate executive of insolvent company liable as a transferee of assets for unpaid income taxes and the interest that accrued since the taxes became due. Transferee liable under § 38-10-117 (1) because conveyance was made with the intent to hinder, delay, or defraud creditors, in this case, the internal revenue service. While structuring the sale of the assets of the insolvent company, corporate executive (transferee) obtained multiple opinions on the foreseeable tax consequences. Informed by those opinions and his corporate acumen, executive knowingly chose to take a calculated risk. *Scott v. Comm'r of Internal Rev.*, 236 F.3d 1239 (10th Cir. 2001).

A wrongful withholding only requires the failure to pay or deliver money or property when there is an obligation to do so. Therefore an insurer's failure to pay uninsured motorist benefits need not be tortious or in bad faith to be a wrongful withholding for purposes of this section. *Peterman v. State Farm Mut. Auto. Ins. Co.*, 8 P.3d 549 (Colo. App. 2000).

There are judicially created exceptions to the general rule that the allowance of interest is a creature of statute. *Davis Cattle Co. v. Great W. Sugar Co.*, 544 F.2d 436 (10th Cir. 1976), *cert. denied*, 429 U.S. 1094, 97 S. Ct. 1109, 51 L. Ed. 2d 541 (1977).

A plaintiff is not entitled to prejudgment interest on all compensatory damages flowing from a wrongful withholding of property. Rather, a proper award of prejudgment interest applies only to that part of the compensatory damages awarded for money or property wrongfully withheld. *Dillen v. HealthOne, L.L.C.*, 108 P.3d 297 (Colo. App. 2004).

Moratory interest. As a matter of state law, Colorado recognizes moratory interest or the allowance of interest as damages. Moratory interest has been allowed in Colorado for more than 100 years. *Davis Cattle Co. v. Great W. Sugar Co.*, 393 F. Supp. 1165 (D. Colo. 1975), *aff'd*, 544 F.2d 436 (10th Cir. 1976), *cert. denied*, 429 U.S. 1094, 97 S. Ct. 1109, 51 L. Ed. 2d 541 (1977).

Under Colorado law statutory interest cannot be awarded on an unliquidated claim but such does not preclude the awarding of moratory interest, i.e., interest by way of damages and not as a creature of statute. *Davis Cattle Co. v. Great W. Sugar Co.*, 544 F.2d 436 (10th Cir. 1976), *cert. denied*, 429 U.S. 1094, 97 S. Ct. 1109, 51 L. Ed. 2d 541 (1977).

In allowing prejudgment interest, it is recognized that just compensation for the victim is a fundamental principle of damages, and that where money has been wrongfully withheld, it is only fair that the victim receive interest on the money thus withheld. *Davis Cattle Co. v. Great W. Sugar Co.*, 544 F.2d 436 (10th Cir. 1976), *cert. denied*, 429 U.S. 1094, 97 S. Ct. 1109, 51 L. Ed. 2d 541 (1977); *Robb v. Universal Constructors, Inc.*, 665 F.2d 998 (10th Cir. 1981).

A judgment awarding interest on damages when entered falls under this section, and as to the statutory rate. The rate of statutory interest, as distinguished from the rate of moratory interest, is fixed and mandatory. *Davis Cattle Co. v. Great W. Sugar Co.*, 393 F. Supp. 1165 (D. Colo. 1975), *aff'd*, 544 F.2d 436 (10th Cir. 1976), *cert. denied*, 429 U.S. 1094, 97 S. Ct. 1109, 51 L. Ed. 2d 541 (1977).

In the absence of any proof as to the guilty party's gain, the statutory rate of interest for transactions entered into at that time should be awarded as

damages. *Alfred Brown Co. v. Johnson-Gibbons and Reed*, 695 P.2d 746 (Colo. App. 1984).

The court does not err when it awards interest on a wrongfully withheld sum even though the exact amount is unliquidated until the date of judgment. *Jasken v. Sheehy Constr. Co.*, 642 P.2d 58 (Colo. App. 1982).

Interest award on spouse's elective share of augmented estate and exempt property allowance is one of moratory interest which may run from date court finds elective share and allowance rather than from date of death of spouse. *Matter of Estate of Smith*, 718 P.2d 1069 (Colo. App. 1986).

For discussion of moratory interest award, see *E.B. Jones Constr. Co. v. Denver*, 717 P.2d 1009 (Colo. App. 1986).

Buyer entitled to interest where bank failed to deliver to the buyers a warranty deed as required by the contract, and trial court properly found that the bank wrongfully withheld the property. *Cooper v. Peoples Bank & Trust Co.*, 725 P.2d 78 (Colo. App. 1986).

Trial court acted properly in finding that the defendants had wrongfully withheld funds from plaintiffs and in awarding such plaintiffs pre-judgment interest. *Colo. Performance v. Mariposa Assoc.*, 754 P.2d 401 (Colo. App. 1987).

A claim for damages for lost market value stemming from stock not being registered together with interest measured by a percentage of that loss would have been one for prejudgment interest subject to the limitations of Colorado law. *United Telecomms., Inc. v. Am. Television & Commc'ns Corp.*, 536 F.2d 1310 (10th Cir. 1976).

The Colorado interest statute does not deal with interest charges which arise from an independent debt owed by the plaintiff to a third party. *United Telecomms., Inc. v. Am. Television & Commc'ns Corp.*, 536 F.2d 1310 (10th Cir. 1976).

Interest which appellant was obligated to pay on money which it was required to borrow as a result of appellee's unwarranted delays and manipulations is not regulated by this section. *United Telecomms., Inc. v. Am. Television & Commc'ns Corp.*, 536 F.2d 1310 (10th Cir. 1976).

Brokerage commission due under oral contract falls within this section and interest is due on the commission from the date that it was due and payable. *Hayes v. N. Table Mt. Corp.*, 43 Colo. App. 467, 608 P.2d 830 (1979).

Broker's commission became due as a matter of law when the broker produced a buyer ready, willing, and able to purchase the property, and interest at the statutory rate began to accrue at that time. *Mack v. McKanna*, 687 P.2d 1326 (Colo. App. 1984).

Interest from date of filing of complaint. Where all of the transactions involving the secret profit made by the real estate agent in sale of building in violation of agent's fiduciary duty were completed on December 18, 1972, the principal would have been entitled to interest at the legal rate on the judgment from that date. However, since in the complaint the principal asked for interest only from the date of filing the complaint, interest from that period shall be part of the judgment. *Lestoque v. M.R. Mansfield Realty, Inc.*, 36 Colo. App. 32, 536 P.2d 1146 (1975).

A debtor cannot avoid the payment of interest by disputing an account, and when the account or any portion thereof is found due, the creditor is entitled to interest on the amount due. *Quad Constr., Inc. v. Wm. A. Smith Contracting Co.*, 534 F.2d 1391 (10th Cir. 1976).

Award of prejudgment interest appropriate where money was wrongfully withheld pursuant to a statute which conflicted with the constitutional provision of article XXI, section 4. *Passarelli v. Schoettler*, 742 P.2d 867 (Colo. 1987).

An award of prejudgment interest in a judgment against the state is not prohibited even though the general assembly did not expressly provide for an award nor is governmental immunity a bar to such an award. *Passarelli v. Schoettler*, 742 P.2d 867 (Colo. 1987).

Prejudgment interest may be awarded in property damage cases, as the legislative history clearly indicates that all cases are to be treated equally regarding the time that interest begins to accrue. *Isbill Assocs. v. City & County of Denver*, 666 P.2d 1117 (Colo. App. 1983); *La Fond v. Basham*, 683 P.2d 367 (Colo. App. 1984); *Mesa Sand & Gravel v. Landfill, Inc.*, 776 P.2d 362 (Colo. 1989); *Lowell Staats Min. Co. v. Pioneer Uravan, Inc.*, 878 F.2d 1259 (10th Cir. 1989); *Teilhaver Mfg. v. Unarco Materials*, 791 P.2d 1164 (Colo. App. 1989).

Prejudgment interest may be awarded in breach of construction contract case even if amount is unliquidated at time of wrongful withholding. *Hott v. Tillotson-Lewis Const. Co.*, 682 P.2d 1220 (Colo. App. 1983); *Teilhaver Mfg. v. Unarco Materials*, 791 P.2d 1164 (Colo. App. 1989); cert. denied, 803 P.2d 517 (Colo. 1991).

Prejudgment interest may be awarded in intentional interference with contract case, as subsection (1)(b) is to be given a broad liberal construction to effectuate the general assembly's purpose of compensating parties for the loss of money or property to which they are entitled. *Westfield Dev. v. Rifle Inv. Assoc.*, 786 P.2d 1112 (Colo. 1990).

Prejudgment interest is permitted on the amount of compensatory damages that an insured would have received under the insurance contract from the time of the insurer's wrongful withholding. *Herod v. Colo. Farm Bureau Mut. Ins.*, 928 P.2d 834 (Colo. App. 1996).

Prejudgment interest is permitted on the amount of wages for "comp time" employee earned while working for employer. Because employee was not paid those wages when he or she left the company, employer's withholding was wrongful. Thus, employee is entitled to an award of prejudgment interest calculated on his or her award from the effective date of resignation to the date of final judgment. *Remote Switch Sys. v. Delangis*, 126 P.3d 269 (Colo. App. 2005).

Nothing in the statute requires that a judgment creditor establish tortious conduct by a debtor to support award of prejudgment interest. *Benham v. Mfrs. Wholesalers Indem. Exch.*, 685 P.2d 249 (Colo. App. 1984); *Cooper v. Peoples Bank and Trust Co.*, 725 P.2d 78 (Colo. App. 1986).

Being the more specific statute, the plain terms of § 8-41-203 control over this section and, therefore, insurer is limited pursuant to subrogation agreement for workers' compensation to recover only the amount which it paid to the injured employee and cannot collect any interest on amount. *Husson v. Meeker*, 812 P.2d 731 (Colo. App. 1991).

This section contains no requirement that town request statutory interest in its pleadings for court to award interest pursuant to C.R.C.P. 54(c). *Town of Breckenridge v. Golforce, Inc.*, 851 P.2d 214 (Colo. App. 1992).

But, plaintiff not entitled to prejudgment interest in case of award of damages for emotional distress. Purpose of prejudgment interest is to discourage a person responsible for payment of a claim from delaying payment until judgment or settlement. Award of emotional distress damages are not intended to compensate for wrongful delay in obtaining money or property. *Allabashi v. Lincoln Nat'l Sales Corp.*, 824 P.2d 1 (Colo. App. 1990).

Injuries properly determined as "personal" and not "property" in case where toxic contamination to property caused homeowners inconvenience and loss of peace of mind based on their fear that contaminants could be present in portions of their homes and the perceived stigma attached to homes in the neighborhood. Therefore, the trial court was correct in awarding prejudgment interest on damages at the rate allowed for cases involving "personal injuries". *Antolovich v. Brown Group Retail, Inc.*, 183 P.3d 582 (Colo. App. 2007).

Trial court erred in awarding post-judgment interest to accrue at 8% per annum when promissory note provided for interest to accrue at 13% per annum until paid in full. *Dikeou v. Dikeou*, 916 P.2d 601 (Colo. App. 1995), rev'd on other grounds, 928 P.2d 1286 (Colo. 1996).

Trial court erred in denying plaintiff an award of prejudgment interest on disputed portion of settlement funds that had been placed in a money market account pending the outcome of the trial. *Fasing v. LaFond*, 944 P.2d 608 (Colo. App. 1997).

Creditor defendant entitled to post-judgment interest during its appeal under subsection (4). Post-judgment interest continues to accrue until the judgment is satisfied. *Indian Mountain v. J.P. Campbell & Assocs.*, 921 P.2d 65 (Colo. App. 1996).

The inquiry under this section is whether the money or property was wrongfully withheld from the nonbreaching party, and not whether the nature of the conduct of the breaching party brings him or her within the ambit of the statute. *Rodgers v. Colo. Dept. of Human Servs.*, 39 P.3d 1232 (Colo. App. 2001).

Where one party withholds money from another party in reliance on an administrative order that is subsequently reversed, the party withholding the money was not entitled to the money; therefore, the party that was deprived of the use of the money is entitled to an award of interest on the amount of money that was wrongfully withheld. *Rodgers v. Colo. Dept. of Human Servs.*, 39 P.3d 1232 (Colo. App. 2001).

B. Bonds.

Interest upon the penalty of a bond is allowed, and the penalty in a bond is the amount which the obligors agree to pay, if the whole penalty be needed to satisfy the damages sustained by the obligee by a breach of the bond, and is due as soon as the breach occurs. *Massachusetts Bonding & Ins. Co. v. State ex rel. Mallin*, 141 Colo. 259, 347 P.2d 507 (1959).

An amount becomes due on a performance bond when the bills for costs are submitted to the surety. A dispute as to the amount due does not remove the claim from this section. *Asphalt Paving Co. v. United States Fid. & Guar. Co.*, 671 P.2d 1013 (Colo. App. 1983).

The fact that the amount of the judgment, together with interest, exceeds the penalty of a bond does not preclude the collection of principal and interest. *Massachusetts Bonding & Ins. Co. v. State ex rel. Mallin*, 141 Colo. 259, 347 P.2d 507 (1959).

The fact that a judgment was not satisfied, in due course, and that, as a consequence, the amount of that judgment together with accrued interest now exceeds the penalty of a bond does not preclude the collection of principal and interest. *Key Sav. & Loan Ass'n v. Travelers Indem. Co.*, 32 Colo. App. 358, 513 P.2d 737 (1973).

C. Promissory Notes.

Note may provide for payment of interest. Under this section a promissory note which provides that upon failure to pay the principal when due interest shall be payable from date of note is a good contract, and the interest is recoverable. *McKay's Estate v. Belknap Sav. Bank*, 27 Colo. 50, 59 P. 745 (1899).

Upon a guaranty indorsed on a promissory note, both the principal and the interest specified in the note may be recovered. *Martin v. Hazzard Powder Co.*, 2 Colo. 596 (1875).

Only statutory rate of interest allowed. Where judgment is procured upon a note, only statutory interest as allowed by this section can be recovered, notwithstanding the note provides for higher interest on amounts not paid when due. *Hiller v. Matheny*, 81 Colo. 459, 256 P. 10 (1927).

In an action to recover the amount paid for notes where the purchase is rescinded for fraud, the basis of recovery is the benefit to the defendant, and where there is an absence of proof as to the interest rate which would produce an amount equal to such benefit the statutory legal rate should be adopted. *Bankers Trust Co. v. Int'l Trust Co.*, 108 Colo. 15, 113 P.2d 656 (1941).

Where the rate of interest is left blank on a promissory note, the legal rate, as provided by this section, is six percent, and the insertion of a higher rate of interest by the holder constitutes a material alteration which renders the note invalid. *Farmers State Bank v. Klein*, 159 Colo. 165, 410 P.2d 632 (1966).

If the person executing a preprinted form note which provides a blank for interest does not want to be bound to such, then the provision should be stricken or the word "none" should be inserted in the blank; otherwise interest at the statutory rate is due. *Fin. Mgmt. Task Force, Inc. v. Altberger*, 807 P.2d 1230 (Colo. App. 1990).

D. Other Instruments of Writing.

The "other instrument of writing" as used in this section is one based on contractual relations, an instrument importing mutuality, one which implies an obligation to pay for a consideration rendered. *Cobb v. Stratton's Estate*, 56 Colo. 278, 138 P. 35 (1914).

A will is not such an instrument. *Cobb v. Stratton's Estate*, 56 Colo. 278, 138 P. 35 (1914).

Interest in a legacy is not allowable. *Cobb v. Stratton's Estate*, 56 Colo. 278, 138 P. 35 (1914).

The term "instrument of writing" has a definite legal meaning which excludes a verdict as something essentially different. *Hawley v. Barker*, 5 Colo. 118 (1879); *Cobb v. Stratton's Estate*, 56 Colo. 278, 138 P. 35 (1914).

An instrument of writing implies an agreement or contract which it contains and of which it is the memorial. *Hawley v. Barker*, 5 Colo. 118 (1879); *Cobb v. Stratton's Estate*, 56 Colo. 278, 138 P. 35 (1914).

This definition is in effect a declaration that such "other instrument of writing" must be one having the characteristics of a bond, bill, or promissory note and may not be something essentially different. *Cobb v. Stratton's Estate*, 56 Colo. 278, 138 P. 35 (1914).

A policy of insurance is a contract and is within the meaning of "other instrument of writing". *Bloom v. Wolfe*, 37 Colo. App. 407, 547 P.2d 934 (1976).

Coupons from municipal bonds, being issued by the municipality in its business, rather than its governmental function, are "promissory notes" or "other instruments of writing" within the meaning of this section and bear interest from their maturity as therein provided. *Bd. of Comm'rs v. Geer*, 108 F. 478 (8th Cir. 1901).

Where leased property is thrown into the hands of a receiver and the landlord directs the tenant to pay no rent to anyone, on which direction he so acts, this does not, under this section, relieve him from liability for interest on payments so withheld. *Lamar Cold Storage Co. v. Union Ice & Storage Co.*, 77 Colo. 556, 238 P. 42 (1925).

E. Judgments.

A judgment creditor who has a claim which falls within the clearly expressed wording of this section is entitled to interest on such claim from the date and at the rate specified in the statute. *Stone v. Currihan*, 138 Colo. 442, 334 P.2d 740 (1959).

This section authorizes interest at the legal rate on the amount of a judgment from and after entry thereof. *Denver-Albuquerque Motor Transp., Inc. v. Galligan*, 145 Colo. 71, 358 P.2d 28 (1960).

Interest on a judgment is specifically authorized by this section. *Security Ins. Co. v. Houser*, 191 Colo. 189, 552 P.2d 308 (1976).

Pursuant to this section, interest is recoverable from the date the amount becomes due. *Flight Sys. v. Elgood-Mayo Corp.*, 660 P.2d 909 (Colo. App. 1982).

Where the insurance contract does not specify a rate of interest, the general statutory rate of eight percent governs the recovery of postjudgment interest. *Church v. Am. Standard Ins. Co.*, 764 P.2d 405 (Colo. App. 1988); *Loza v. State Farm Mut. Auto. Ins. Co.*, 971 P.2d 251 (Colo. App. 1998).

Although an underinsured motorist policy is a contract and therefore would fall under this section, which dictates interest to accrue at eight percent, the claim under that policy may be premised upon a tort claim for bodily injury and therefore accrue interest at the higher rate dictated by § 13-21-101. Here, plaintiff's underinsured motorist claim was for damages resulting from the tort of another person, even though it also involved the contract with his insurer; therefore, he was entitled to the

higher interest rate of § 13-21-101. *Parker v. USAA*, ___ P.3d ___ (Colo. App. 2007).

The postjudgment interest rate authorized by this section serves as the interest rate for judgments involving personal injury protection benefits. If the interest rate under § 10-4-708 were to serve as the prejudgment and the postjudgment interest rate, an inconsistency would exist between this section and § 10-4-708, which establishes the prejudgment interest rate in personal injury protection benefit cases. *Loza v. State Farm Mut. Auto. Ins. Co.*, 971 P.2d 251 (Colo. App. 1998).

A trial court errs in awarding interest from the date of filing the complaint. *Denver-Albuquerque Motor Transp., Inc. v. Galligan*, 145 Colo. 71, 358 P.2d 28 (1960).

Allowing interest from date of arbitration award is not error. *Columbine Valley Constr. Co. v. Bd. of Dirs.*, 626 P.2d 686 (Colo. 1981). Interest accrues from the date of the wrong, not from the date of the judgment. *Isbill Assocs., Inc. v. Denver*, 666 P.2d 1117 (Colo. App. 1983); *Bassett v. Eagle Telecomms.*, 750 P.2d 73 (Colo. App. 1987); *Colo. Performance Corp. v. Mariposa Assocs.*, 754 P.2d 401 (Colo. App. 1987).

Interest on property damage award accrues from the time the cause of action accrued, that is, from the date on which the injured party was wronged. *Federal Ins. Co. v. Ferrellgas, Inc.*, 961 P.2d 511 (Colo. App. 1997).

Interest on damage award in an ADA claim accrues from the date of judgment and not from the date of the jury verdict. *Fail v. Cmty. Hosp.*, 946 P.2d 573 (Colo. App. 1997).

When attorney fees are awarded, not as damages but to shift the burden of litigation, interest on the award runs from the date of the final order quantifying the amount of fees and not from any earlier judgment or order that might have established a party's right to recover damages or fees without specifying an amount. *Kennedy v. King Soopers Inc.*, 148 P.3d 385 (Colo. App. 2006).

Under this section fixing the rate of interest at six percent, a judgment fixing the rate of interest in such case higher is erroneous. *Bd. of County Comm'rs v. Bd. of County Comm'rs*, 15 Colo. 320, 25 P. 508 (1890).

After judgment is entered, this section is applicable in regard to collection of interest on judgment. *Schoenfeld v. Neher*, 453 F.2d 896 (10th Cir. 1972).

Insurer cannot owe postjudgment interest in absence of an enforceable judgment. *Old Republic Ins. Co. v. Ross*, 180 P.3d 427 (Colo. 2008).

A plaintiff on the entry of a judgment becomes a creditor as contemplated by this section; he becomes a judgment creditor and clearly comes within the statutory purview of those entitled to recover interest. *Stone v. Currihan*, 138 Colo. 442, 334 P.2d 740 (1959).

Where a judgment is entered "nunc pro tunc", plaintiff should have interest on the amount to be found due as of the date it is considered reduced to judgment since, except as to the rights of third persons, a judgment "nunc pro tunc" is retrospective and has the same force and effect, to all intents and purposes, as though it had been entered at the time when the judgment was originally rendered. *Stone v. Currihan*, 138 Colo. 442, 334 P.2d 740 (1959).

Similarly, where the court orders claims to be restored "with legal interest", such claims duly allowed are of like significance, and bear the same interest as entered judgments under this section. *Myers v. Colo. Pulp & Paper Co.*, 95 Colo. 328, 35 P.2d 1020 (1934).

A verdict for the full amount due under a contract of sale is tantamount to a determination that plaintiffs substantially complied with the terms of the contract, and that the sums provided therein became due and payable according to its tenor; this being so, they are entitled to statutory interest after maturity. *Baer Bros. Land & Cattle Co. v. Reed*, 197 F.2d 569 (10th Cir. 1952).

Where a motion for a new trial is overruled and thereafter a trial court computes interest on the verdict and orders judgment in the amount of the verdict and interest, this concludes the trial court's action relative to the judgment, and it becomes the final judgment. *Green v. Jones*, 134 Colo. 208, 304 P.2d 901 (1956).

In a suit on a foreign judgment, it is proper to allow interest on the original judgment and make the sum of principal and interest the principal amount of the judgment, which will also draw interest. *Bruckman v. Taussig*, 7 Colo. 561, 5 P. 152 (1884).

Judgment awarding prejudgment interest is not final until the amount of such interest is reduced to a sum certain. *Grand County Custom Homebuilding, LLC v. Bell*, 148 P.3d 398 (Colo. App. 2006).

F. Accounts and Money Due on Account.

This section provides that interest shall be allowed upon all moneys after they become due. *Peterson v. Shaffer*, 143 Colo. 138, 352 P.2d 281 (1960).

Any creditor who can bring himself within the terms of this section is entitled to interest from his debtor. *Stone v. Currigan*, 138 Colo. 442, 334 P.2d 740 (1959); *Massachusetts Bonding & Ins. Co. v. State ex rel. Mallin*, 141 Colo. 259, 347 P.2d 507 (1959).

While this section does not say who shall pay interest, it necessarily follows that if a creditor is entitled to receive interest, his debtor must be charged with the payment thereof; if a judgment creditor is entitled to recover interest then the judgment debtor must be the one to pay it, since this section does not expressly or by implication exclude or except any judgment creditor or judgment debtor. *Stone v. Currigan*, 138 Colo. 442, 334 P.2d 740 (1959).

This section is clear and concise with reference to judgement creditors. *Stone v. Currigan*, 138 Colo. 442, 334 P.2d 740 (1959).

This section, because it imposes upon the debtor an additional burden in the way of damages for the withholding of money after it becomes due on account, should be strictly construed. *Patten v. Am. Nat'l Bank*, 15 Colo. App. 479, 63 P. 424 (1900); *Smith-McCord-Townsend Co. v. Camenga*, 104 Colo. 7, 87 P.2d 751 (1939); *Hunter v. Wilson*, 147 Colo. 36, 362 P.2d 553 (1961).

Meaning of word "account". The word "account", when used alone, as in this section, without words of limitation, extension, qualification, or explanation is sometimes equivalent to the word "claim" or "demand" when referring to an indebtedness arising out of contract or some fiduciary relation. *Donley v. Bailey*, 48 Colo. 373, 110 P. 65 (1910).

"Money due on account" includes fixed commission. As this section does not limit or qualify the meaning of the word "account", the phrase "money due on account", must include the claim of one who by procuring a lease of lands for another earns a fixed sum as a commission, and he is entitled to interest from the time the claim became due, it being liquidated. *Donley v. Bailey*, 48 Colo. 373, 110 P. 65 (1910); *Harvey v. Denver & R. G. R. R.*, 56 Colo. 570, 139 P. 1098 (1914).

The award of interest on commissions from the dates of the deeds, based on the reasonable determination that the commissions are due at such times, is proper. *Manufacturer's Nat'l Bank v. Hartmeister*, 411 F.2d 173 (10th Cir. 1969).

Interest may be recovered on a liquidated sum admitted to be due and payable on a day certain. *Higgins v. Armstrong*, 9 Colo. 38, 10 P. 232 (1886); *Harvey v. Denver & R. G. R. R.*, 56 Colo. 570, 139 P. 1098 (1914).

This section in its present form has been carried over into the law of Colorado from early time, and the Colorado courts have traditionally required the allowance of interest on liquidated claims. *N. Drive-In Theatre Corp. v. Park-In Theatres, Inc.*, 248 F.2d 232 (10th Cir. 1957).

The federal courts have given the statute a like construction. *N. Drive-In Theatre Corp. v. Park-In Theatres, Inc.*, 248 F.2d 232 (10th Cir. 1957).

So where the amount payable under a contract is a liquidated amount, it falls within the definitions contained in the statute. *York Plumbing & Heating Co. v. Groussman Inv. Co.*, 166 Colo. 382, 443 P.2d 986 (1968).

A liability fixed by law is a liquidated liability. *T. & M. Transp. Co. v. Shattuck Chem. Co.*, 158 F.2d 909 (10th Cir. 1947).

For interest recovered by carrier under interstate commerce act, see *T. & M. Transp. Co. v. Shattuck Chem. Co.*, 158 F.2d 909 (10th Cir. 1947).

State entitled to interest on taxes not paid to treasurer by state auditor. Where the state auditor keeps an account of the money received by him for taxes, which is due within 30 days after he receives it -- that is, the statute requires him to pay it into the treasury within the 30 days -- on each payment of taxes not paid over to the treasurer the state is entitled to interest under this section from the expiration of 30 days after its receipt by the auditor. *Am. Bonding Co. v. People*, 53 Colo. 512, 127 P. 941 (1912).

As towns and cities in business transactions are liable for interest, in the absence of statute, the same as private corporations or individuals, despite the conclusion reached by this court in *Bd. of Comm'rs v. Wheeler*, 39 Colo. 207, 89 P. 50 (1907), which was but dicta in that case. *City of Golden v. W. Lumber & Pole Co.*, 60 Colo. 382, 154 P. 95 (1916).

In entering into a contract for services, a city lays aside its attributes of sovereignty and becomes liable just as an individual would be liable, including for interest. *City & County of Denver v. Thomas*, 176 Colo. 483, 491 P.2d 573 (1971).

A city which refuses or neglects payment of a just demand is liable for interest thereon. *City of Golden v. W. Lumber & Pole Co.*, 60 Colo. 382, 154 P. 95 (1916).

Additionally, interest is allowable on mechanics' lien claims as an incident to the debt against the property. *Buerger Inv. Co. v. Salzer Lumber Co.*, 77 Colo. 401, 237 P. 162 (1925).

Interest is allowed upon a balance due for work performed. *Donley v. Bailey*, 48 Colo. 373, 110 P. 65 (1910); *Idaho Gold Coin Mining & Milling Co. v. Colo. Iron Works Co.*, 49 Colo. 66, 111 P. 553 (1910); *Wells v. Crawford*, 23 Colo. App. 103, 127 P. 914 (1912).

An unliquidated claim does not come within the statute as to allowance of interest. *Hunter v. Wilson*, 147 Colo. 36, 362 P.2d 553 (1961).

Where a claim for damages has never been settled, it is unliquidated, and therefore this section is not applicable. *Credit Inv. & Loan Co. v. Guar. Bank & Trust Co.*, 166 Colo. 471, 444 P.2d 633 (1968).

Where the claim for damages for breach of warranty is unliquidated, such does not fall within the types of debts enumerated by the statute. *York Plumbing & Heating Co. v. Groussman Inv. Co.*, 166 Colo. 382, 443 P.2d 986 (1968).

The mere fact that claims are in dispute does not preclude the recovery of interest thereon. *N. Drive-In Theatre Corp. v. Park-In Theatres, Inc.*, 248 F.2d 232 (10th Cir. 1957).

The mere fact that one disputes the amount due on a bill does not render an account unliquidated; hence, one is therefore entitled to interest from the date he rendered his bill, at which time the account became due and payable. *W. Oil Fields, Inc. v. Coit*, 29 Colo. App. 567, 487 P.2d 562 (1971).

There is no requirement that the arbitration award be a monetary judgment before interest is awarded. Subsection (3) provides that interest shall be allowed even if the amount is unliquidated at the time of the wrongful withholding. *Wilson v. Estate of Lawrence*, 910 P.2d 67 (Colo. App. 1995).

A debtor cannot avoid the payment of interest by disputing the account, and when at the trial the account or any portion of it is established, the creditor is entitled to interest upon the amount found to be due. *Florence & Cripple Creek R. R. v. Tennant*, 32 Colo. 71, 75 P. 410 (1904); *York Plumbing & Heating Co. v. Groussman Inv. Co.*, 166 Colo. 382, 443 P.2d 986 (1968).

Claiming unliquidated setoff against whole debt. A debtor cannot defeat the running of interest against him for the part of a debt which he admits that he owes, and which would otherwise draw interest, by simply making a claim of an unliquidated setoff against the whole debt. *York Plumbing & Heating Co. v. Groussman Inv. Co.*, 166 Colo. 382, 443 P.2d 986 (1968).

Interest allowed only on balance due. Where a claim under an agreement is certain and liquidated, but is reduced because of the allowance of an unliquidated setoff or counterclaim, interest may be allowed only on the balance due. *York Plumbing & Heating Co. v. Groussman Inv. Co.*, 166 Colo. 382, 443 P.2d 986 (1968).

Setoff should be at time due. The claim of the debtor not bearing interest should be set off against that of the creditor drawing interest as of the date of the time it became due and owing. *York Plumbing & Heating Co. v. Groussman Inv. Co.*, 166 Colo. 382, 443 P.2d 986 (1968).

For the interest on "money due on settlement of an account from the day of the last just entry made on account" under earlier provision, see *Bergundthal v. Bailey*, 15 Colo. 257, 25 P. 86 (1890).

G. Money Fraudulently Converted.

Interest for tortious taking or detention of money or property. By distinguishing between interest as such and interest as damages the equivalent of interest in the way of damages for the tortious taking and detention of money or property is allowed, even when interest is not recoverable under the statute. Where interest is allowed as damages and there is an absence of proof as to the rate which would produce the amount the statutory legal rate should be adopted. *Bankers Trust Co. v. Int'l Trust Co.*, 108 Colo. 15, 113 P.2d 656 (1941).

Where record does not disclose that amounts charged against a fiduciary were levied because of a fraudulent taking, there is no reversible abuse of discretion by the trial court in refusing interest on such amounts. *Latta v. Henry*, 28 Colo. App. 220, 472 P.2d 690 (1970).

III. NONALLOWANCE OF INTEREST.

There is no provision for interest upon damages resulting from the wrongful taking of property, and without statutory authority, it is not recoverable. *Greeley, S. L. & Pac. Ry. v. Yount*, 7 Colo. App. 189, 42 P. 1023 (1895); *Banker's Trust Co. v. Int'l Trust Co.*, 108 Colo. 15, 113 P.2d 656 (1941).

Damages to property arising from the wrong or negligence of a defendant is not one of the enumerated cases. *Denver, S. P. & P. R. R. v. Conway*, 8 Colo. 1, 5 P. 142, 54 Am. R. 537 (1884).

An action in damage for a breach of warranty is not one of the enumerated cases. *Weaver v. First Nat'l Bank*, 138 Colo. 83, 330 P.2d 142 (1958).

Also, interest is not recoverable upon an unliquidated demand, for under all the authorities, even where interest is recoverable upon an unliquidated claim, it does not begin to run until the date of the demand, and the beginning of a suit is deemed equivalent to a demand. *Denver, S. P. & P. R. R. v. Moynahan*, 8 Colo. 56, 5 P. 811 (1884); *Dexter v. Collins*, 21 Colo. 455, 42 P. 664 (1895); *T. & M. Transp. Co. v. Shattuck Chem. Co.*, 158 F.2d 909 (10th Cir. 1947); *Schlottman v. Pressey*, 195 F.2d 343 (10th Cir. 1952).

Interest cannot be allowed on unliquidated claims. *Yeager Garden Acres, Inc. v. Summit Constr. Co.*, 32 Colo. App. 242, 513 P.2d 458 (1973); *I.M.A., Inc. v. Rocky Mountain Airways, Inc.*, 713 P.2d 882 (Colo. 1986) (decided under former law).

In Colorado statutory interest cannot be awarded under this section on an unliquidated claim, but this does not end the matter. Statutory interest is one thing, but there is another kind of interest -- moratory interest or interest by way of damages. *Davis Cattle Co. v. Great W. Sugar Co.*, 393 F. Supp. 1165 (D. Colo. 1975), *aff'd*, 544 F.2d 436 (10th Cir. 1976), *cert. denied*, 429 U.S. 1094, 97 S. Ct. 1109, 51 L. Ed. 2d 541 (1977).

Interest is not allowable upon a balance due for work. *Hurlburt v. Dusenbery*, 26 Colo. 240, 57 P. 860 (1899).

Nothing contained in this section can be construed to authorize the recovery of interest in an action for damages for fraud and deceit. *Clark v. Giacomini*, 85 Colo. 530, 277 P. 306 (1929).

Interest is not recoverable on the amount of a verdict, although a substantial period of time (e.g., two years) has elapsed from the date of its rendition up to the time of the entry of judgment thereon. *Hawley v. Barker*, 5 Colo. 118 (1879).

County acting in governmental purpose not within this section. A county, being essentially an agency of the state for general governmental purposes, is not within the purview of this section regulating the rate and payment of interest upon money due or to become due from it. *Roberts v. Bd. of County Comm'rs*, 94 Colo. 149, 28 P.2d 813 (1934).

It was not the intention of the general assembly to allow interest upon claims against counties by virtue of this section, because § 5-12-104 provides that county orders and warrants and other like evidences or certificates of indebtedness shall bear interest at the rate of six percent. If it was intended that obligations of the county other than those mentioned in § 5-12-104 should draw interest, as provided in this section, the enactment of this section would have been idle, because it provides for the allowance of interest "on any bond, bill, promissory note or other instrument of writing", which expressions are broad enough to include county orders and warrants and other like evidences of municipal indebtedness. The rule being that counties may not have liabilities imposed upon them in the absence of a statute, and the fact that the general assembly provided that county orders, warrants and other like evidences of municipal indebtedness shall bear interest, it must have intended to exclude all obligations other than those mentioned - *expressio unius est exclusio alterius*. *Bd. of County Comm'rs v. Wheeler*, 39 Colo. 207, 89 P. 50 (1907); *City of Golden v. W. Lumber & Pole Co.*, 60 Colo. 382, 154 P. 95 (1916).

Interest is not recoverable against a municipal corporation on claims arising out of its actions in a governmental capacity. *Police Pension & Relief Bd. v. Behnke*, 143 Colo. 365, 353 P.2d 370 (1960).

Where the rights and duties of the parties are adjudicated and determined, then where plaintiffs have a money judgment, they are entitled to statutory interest thereon. *Police Pension & Relief Bd. v. Behnke*, 143 Colo. 365, 353 P.2d 370 (1960).

This section does not authorize the awarding of interest on overdue interest. It may be true that interest, when it has become payable, is "money become due", but a fair construction of this section will allow the language to cover only interest upon the principal, within the legislative intent, especially in view of the provision of §5-12-103 allowing any rate to be agreed upon. So, this statute does not authorize the awarding of interest on overdue interest. *Denver Brick, etc., Co. v. McAllister*, 6 Colo. 261 (1882); *Bd. of County Comm'rs v. Linn*, 29 Colo. 446, 68 P. 839 (1902).

Where interest is claimed as damages and principal is accepted without interest right to interest is extinguished. Where interest is claimed as damages by virtue of the nonpayment of a debt when due, and for that reason is allowed by law, it is then considered not an integral part of a debt, but merely as an incident to the debt, and in such cases when the principal is paid and accepted without interest, the right to interest is extinguished. *Bassick Gold Mine Co. v. Beardsley*, 49 Colo. 275, 112 P. 770 (1911).

A protest for the nonpayment of the interest does not change this rule. *Bassick Gold Mine Co. v. Beardsley*, 49 Colo. 275, 112 P. 770 (1911).

Similarly, a receipt "in payment of above account" is a complete settlement, barring fraud or mistake, and precludes a subsequent claim of interest on the grounds that the amount was not paid promptly at its maturity. *Bassick Gold Mine Co. v. Beardsley*, 49 Colo. 275, 112 P. 770 (1911).

Section not applicable to judgment determining rights to funds paid into court. This statute, which allows judgment creditors to receive interest, does not apply to a judgment determining the right to funds paid into court, especially in an interpleader action, where the judgment is against the fund, not against the other parties. *Ritter v. Wysowatcky*, 32 Colo. App. 410, 514 P.2d 333 (1973).

Prejudgment interest cannot apply to punitive damage awards. *Coale v. Dow Chem. Co.*, 701 P.2d 885 (Colo. App. 1985).

If there is a specific agreement for interest, but the right to interest has been waived, this section is not applicable. *Ebrahimi v. E.F. Hutton & Co., Inc.*, 794 P.2d 1015 (Colo. App. 1989).

Where demand for payment under a performance bond was not made before suit was filed, interest on the judgment should be awarded to plaintiff only from the date the complaint was filed. *Riva Ridge Apts. v. Robert G. Fisher Co.*, 745 P.2d 1034 (Colo. App. 1987).

Subsection (1) affords plaintiff no basis for recovery when the plaintiff's claim for interest arises from a personal injury and not as a creditor or a party to a contract. Subsection (1) generally pertains to post-judgment interest that applies to debt, contract, and property damage cases. *Schnacker v. State Farm Mut. Auto. Ins. Co.*, 843 P.2d 102 (Colo. App. 1992).

Future wages and benefits are not "due" within meaning of this section. Therefore, prejudgment interest should not have been awarded on the portion of a judgment representing lost future wages and benefits. *Shannon v. Colo. Sch. of Mines*, 847 P.2d 210 (Colo. App. 1992); *Dillen v. HealthOne, L.L.C.*, 108 P.3d 297 (Colo. App. 2004).

Prejudgment interest may not be awarded for future damages. *Life Care Centers v. E. Hampden Assoc.*, 903 P.2d 1180 (Colo. App. 1995).

Prejudgment interest, under a theory of wrongful withholding, is not available on an award for attorney fees to compensate plaintiffs for the loss of use of their money. *Roget v. Grand Pontiac, Inc.*, 5 P.3d 341 (Colo. App. 1999).

Consequential damages resulting from a wrongful withholding are not subject to prejudgment interest. Only the amounts actually withheld may draw interest under this section. *S. Park Aggregates, Inc. v. Nw. Nat. Ins. Co.*, 847 P.2d 218 (Colo. App. 1992).

Section is inapplicable when another party absconded with the plaintiff's money. Defendant was not the party wrongfully withholding the money and did not realize a gain or benefit by retaining it. *Messler v. Phillips*, 867 P.2d 128 (Colo. App. 1993).

Prejudgment interest may not be awarded by trial court upon confirmation of arbitration award where such interest was not requested

during the arbitration. *Duncan v. Nat'l Home Ins. Co.*, 36 P.3d 191 (Colo. App. 2001).

Where an award of attorneys fees was properly characterized as analogous to costs rather than damages, the court abused its discretion by awarding moratory interest on the fees. *Farmers Reservoir & Irrigation Co. v. City of Golden*, 113 P.3d 119 (Colo. 2005).

An award of postjudgment interest is not proper when the award of wages to employee is used to set off the greater amount that employee owes employer for the special master's fee. *Remote Switch Sys. v. Delangis*, 126 P.3d 269 (Colo. App. 2005).

IV. NOTICE OR DEMAND.

Some kind of notice must be given debtor before creditor can recover interest. The only reasonable construction of this section is that even though a debtor may be unable to pay, and a demand therefor be excusable to that extent, still there must be some notice to him of some kind, either by the institution of a suit, or otherwise, of the creditor's intention to terminate the relation of debtor and creditor by declaring the maturity of a debt, or some act of the creditor evidencing such desire and intention, before he can be allowed to recover interest. *Patten v. Am. Nat'l Bank*, 15 Colo. App. 479, 63 P. 424 (1900).

The relation between a bank and its depositor is that of debtor and creditor, the debt becoming due and payable on demand, and even though a bank may be unable to pay, and a demand therefore be excusable to that extent, still there must be some notice by the depositor of his intention of terminating the relation of debtor and creditor by declaring the maturity of the debt before he can recover interest on his deposit under this section. *Patten v. Am. Nat'l Bank*, 15 Colo. App. 479, 63 P. 424 (1900).

Hence, no interest on bank account until demand is made. In cases of general deposits in a bank, unless there be some agreement or usage to the contrary, the undertaking of the bank is only to repay upon demand. Such an account, therefore, does not become due under this section until demand is made for it, and the bank is not in default, or liable to respond in damages, until such demand and refusal. Hence, under this general rule, a plaintiff is not entitled to receive interest on his deposit, unless the circumstances were such as to legally excuse him from making a demand prior to the time when he did make it. *Patten v. Am. Nat'l Bank*, 15 Colo. App. 479, 63 P. 424 (1900).

The fact that a bank is temporarily suspended and its assets are temporarily in the hands of a receiver appointed by the government does not excuse a depositor from making demand so as to render the account due and cause it to draw interest without demand. *Patten v. Am. Nat'l Bank*, 15 Colo. App. 479, 63 P. 424 (1900).

Interest, whether as damages or under this section, must be given from the date of the demand of payment for labor performed and materials furnished. In an action at law on a contract for work done and materials furnished, this section, respecting the allowance of interest, is mandatory. It leaves no discretion in the court to take into consideration, as in equity cases, the laches of the demandant in bringing the suit. *City of Denver v. Barber Asphalt Paving Co.*, 141 F. 69 (8th Cir. 1905).

Absent any agreement by the parties on interest, interest becomes due after payment at the statutory rate on the unpaid balance of the principal

from the date that demand for payment is made. *Knisley v. Parsons*, 172 Colo. 533, 474 P.2d 599 (1970).

Where money is to be paid if third party does not, it is unnecessary to make a demand. Where a contract provides that the parties of the first part will pay the party of the second part a certain sum of money if the sum is not paid by a third party within a specified time, and such third party fails to do so, then it is not necessary to either make a demand upon such third party for payment or to notify the parties of the first part of such failure in order to mature the obligation so as to draw interest in accordance with this section, as the money becomes due upon the failure to pay at the expiration of the specified time and the allowance of interest from the date of the commencement of the suit does not constitute prejudicial error. *Doyle v. Nesting*, 37 Colo. 522, 88 P. 862 (1907), distinguishing *Dexter v. Collins*, 21 Colo. 455, 42 P. 664 (1895).

In the context of determining when payment of debt is wrongfully withheld, either formal demand or circumstances demonstrating a reasonable expectation of payment renders nonpayment wrongful. A letter from an accounting firm satisfied the need for a formal demand for payment, under the theory of wrongful withholding. The parties had retained the firm to examine their mutual accounts and determine their respective obligations. The firm determined the amount of each party's debt and communicated the amounts in a letter to each party. The letter established a present expectation of payment of which both parties were aware. Thus the letter satisfied the need for a formal demand for payment. *Karg v. Mitchek*, 983 P.2d 21 (Colo. App. 1998).

V. COMPUTATION.

Interest should start to run from the date of the entry of a judgment. *Weaver v. First Nat'l Bank*, 138 Colo. 83, 330 P.2d 142 (1958).

At six percent. Under this section, upon execution or satisfaction of judgments, interest should be collected at six percent per annum from the date of each judgment. *Davies v. Craig*, 70 Colo. 473, 203 P. 267 (1921).

Interest should begin accruing on the date the defendant began wrongfully withholding the joint venture funds. The defendant had a reasonable time in which to wind up the joint venture. The trial court found that he willfully failed to do so, and accordingly, pursuant to the statute, interest should have been awarded from date the willful delay began. *Wilson v. Estate of Lawrence*, 910 P.2d 67 (Colo. App. 1995).

One who is damaged by a breach of duty may recover prejudgment interest from the date of the breach, since it is the breach itself that makes the conduct wrongful. *Porter Constr. Servs. v. Ehrhardt, Keefe, Steiner, and Hottman, P.C.*, 131 P.3d 1115 (Colo. App. 2005).

Thus, a judgment against a local government bears interest from the date of its entry. *Stone v. Currigan*, 138 Colo. 442, 334 P.2d 740 (1959).

Interest allowed from date of filing complaint. This section concerning interest on damage claims is mandatory to the end that a trial judge shall compute and enter interest on any verdict or judgment calculated from the date of the filing of the complaint. *Green v. Jones*, 134 Colo. 208, 304 P.2d 901 (1956); *Denver-Albuquerque Motor Transp., Inc. v. Galligan*, 145 Colo. 71, 358 P.2d 28 (1960).

A trustee in bankruptcy who sues for the value of stock issued by an insolvent corporation is entitled to interest from the date of commencing his action. *Feiring v. Gano*, 114 Colo. 567, 168 P.2d 901 (1946).

Interest computed from date of performance on plaintiff's part. Where there was a balance due plaintiff under a written contract which had on plaintiff's part been fully performed prior to a certain date, this date is the date from which interest should be computed, if allowed, and the amount being due on a written instrument, plaintiff is entitled to interest under this section, unless there had been a tender made by defendant. And a deposit of the amount due in court "payable to the plaintiff on demand" is not a tender. *Harvey v. Denver & R. G. R. R.*, 56 Colo. 570, 139 P. 1098 (1914).

Money not turned over by treasurer to successor draws interest from date latter assumed office. Money in the hands of a county treasurer belonging to a county and not turned over to his successor at the time the latter assumed the duties of the office would draw interest under this section at the legal rate from that date, and the sureties on his official bond are liable to the county for such money with interest. *Gartley v. People ex rel. Pueblo County*, 28 Colo. 227, 64 P. 208 (1901).

Agent who converts principal's money is liable for interest from date of transaction. An agent, who being employed to lend the money of his principal converts it to his own use is liable either in *assumpsit* or in an action *ex delicto* for the interest upon the money under this section, from the date of the transaction. *Boyle v. Poor*, 62 Colo. 337, 163 P. 967 (1916).

Interest allowed on account when due. Where in an action containing three counts, the first upon a stated account, the second upon an open book account, and the third for money had and received, plaintiff is entitled to interest on the first count from the date the account was stated, and on the second count from the date the account became due and payable, but disallowed interest on the third. *Mine & Smelter Supply Co. v. Parke & Lacy Co.*, 107 F. 881 (8th Cir. 1901).

Under this section, a party furnishing supplies to a corporation pursuant to a written contract providing that the amount furnished in each calendar month shall be paid for on a day certain in the succeeding month is to be allowed interest on each monthly amount from the day it matures until payment made. *Florence Oil & Ref. Co. v. McRae*, 40 Colo. 303, 90 P. 507 (1907); *Bassick Gold Mine Co. v. Beardsley*, 49 Colo. 275, 112 P. 770 (1911).

Similarly, interest from due date of rent is allowed. In an action for money due for rent by virtue of a written lease, the claim sued on is clearly included in this section, and the plaintiff is entitled to interest from the due date of the installments of rent to the date of judgment. *Wells v. Crawford*, 23 Colo. App. 103, 127 P. 914 (1912); *Lamar Cold Storage Co. v. Union Ice & Storage Co.*, 77 Colo. 556, 238 P. 42 (1925); *Macaluso v. Easley*, 81 Colo. 50, 253 P. 397 (1927).

The fact that the court does not at the time of the entry of judgment compute the amount of the interest accrued to that date is not material; the computation can be made at any time. *Massachusetts Bonding & Ins. Co. v. State ex rel. Mallin*, 141 Colo. 259, 347 P.2d 507 (1959).

When no authority for interest from date of executor's sale. Where an executor contends that the trial court erred in awarding interest on the amount received from the property from the date of sale, rather than only from the date of judgment, then, where there has been no showing and

no finding on the part of the trial court that the money received was held without the owner's consent, there is no authority for the award of interest from the date of sale. *In re Estate of Granberry*, 30 Colo. App. 590, 498 P.2d 960 (1972).

Where a partnership is dissolved by one partner selling to his co-partners his interest at a fixed cash sum, an unpaid balance of the purchase price under this section will draw interest at the legal rate from the date of the transaction. *Cobb v. Benedict*, 27 Colo. 342, 62 P. 222 (1900).

In an action for an accounting where a joint venturer seeks to recover his share of the profits, he is entitled to the legal rate of interest from the date of demand to the date of filing of the master's report. *Pepper v. Hyman*, 117 Colo. 365, 189 P.2d 155 (1947).

The offset of an unliquidated claim against a liquidated claim before the computation of interest is permitted, at least in situations in which the two claims arise out of the same general transaction. *York Plumbing & Heating Co. v. Groussman Inv. Co.*, 166 Colo. 382, 443 P.2d 986 (1968).

Where the claims do not arise out of the same general transaction, the offset of an unliquidated claim against a liquidated claim before computation of interest is not permitted. *Karg v. Mitchek*, 983 P.2d 21 (Colo. App. 1998).

Under the terms of an agreement with a bank, the amount which an armored motor service was obligated to pay the bank as a result of a robbery from their truck became due the day the bank's money disappeared from the truck. Accordingly, the bank was entitled to interest on that obligation, arising under the instrument of writing, from and after that date. *Jefferson County Bank v. Armored Motors Serv.*, 148 Colo. 343, 366 P.2d 134 (1961).

Where a note is made payable "with interest", without specifying the rate, or the time from which the interest is to be computed, the general rule is that the note carries interest from the date of its execution at the legal rate fixed by law. *Salazar v. Taylor*, 18 Colo. 538, 33 P. 369 (1893).

Where the stated rate on a note is unintelligible, this rule likewise applies, and the legal rate fixed by this section would govern. *Salazar v. Taylor*, 18 Colo. 538, 33 P. 369 (1893).

Compound interest may not be recovered. *Denver Brick & Mfg. Co. v. McAllister*, 6 Colo. 261 (1882).

This rule does not apply to unpaid coupons of municipal bonds. The rule that compound interest may not be recovered does not apply to unpaid coupons belonging to or cut from municipal bonds; interest may be recovered on overdue coupons on county bonds. *Bd. of Comm'rs v. Linn*, 29 Colo. 446, 68 P. 839 (1902).

Such coupons draw interest after maturity. *City of Cripple Creek v. Adams*, 36 Colo. 320, 85 P. 184 (1906).

Mode of determining property value for services and consumption. Where the property is domestic animals, valuable for service only, the value of the use of the animal is the measure of compensation, and where the article is intended for consumption, interest upon the value of it would seem to be the true compensation. Thus, if the owner of goods should ask to obtain the like quantity, he must purchase in the market at current rates, and he would be deprived of the use of the money thus invested, the best estimate of a loss that can be made is interest upon

the amount of money which he would for that purpose be compelled to pay out. *Arkansas Valley Land & Cattle Co. v. Mann*, 130 U.S. 69, 9 S. Ct. 458, 32 L. Ed. 854 (1899).

Interest upon the cost of a silver mill might be taken by a jury as its fair rental value, in the absence of other evidence concerning that value. *New York & Colo. Mining Syndicate & Co. v. Fraser*, 130 U.S. 611, 9 S. Ct. 665, 23 L. Ed. 1031 (1889).

Interest on damages for injuries to property or torts commences on date of judgment. The Colorado statute dealing with interest on damages provides that in personal injury cases interest commences as of the date of the filing of the complaint. No mention is made of property injuries or torts. Inasmuch as these are unliquidated, the general rule is that the interest commences to run as of the date of judgment. *Westric Battery Co. v. Standard Elec. Co.*, 482 F.2d 1307 (10th Cir. 1973).

Interest allowed from date defective product was installed, since product was defective at the time of installation. *Loughridge v. Goodyear Tire & Rubber Co.*, 281 F. Supp. 2d 1252 (D. Colo. 2003), *aff'd*, 431 F.3d 1268 (10th Cir. 2005).

Interest awarded on breach of contract judgment from time money due. The court concluded there was a binding contract between the parties; thus the judgment was based upon breach of contract rather than quantum meruit and interest was properly awarded from the time the money was due. *Warde v. Davis*, 494 F.2d 655 (10th Cir. 1974); *Danburg v. Realities, Inc.*, 677 P.2d 439 (Colo. App. 1984).

Interest from date of filing of counterclaim. Subsections (1)(b) and (3) provide that interest shall be from the time moneys were wrongfully withheld or became due and where there is no evidence of any wrongful withholding or demand or expectation of payment by claimant prior to the filing of the counterclaim, trial court was correct in awarding prejudgment interest from such date. *W.H. Woolley & Co. v. Bear Creek Manors*, 735 P.2d 910 (Colo. App. 1986).

Plaintiff is entitled to interest from the time his action accrues. Action for rescission arose when plaintiff amended his complaint and first requested rescission. Prior to that demand, there was no wrongful withholding of the money paid for the house. *Wall v. Foster Petroleum Corp.*, 791 P.2d 1148 (Colo. App. 1989).

No exception for mandamus action. Under this section, the trial court is required to assess interest at the rate of eight percent on any judgment rendered to run from the date of the judgment, and no exception is made for a mandamus action. *Denver Ass'n for Retarded Children v. Sch. Dist. No. 1*, 188 Colo. 310, 535 P.2d 200 (1975).

Where judgment in favor of plaintiff was affirmed on appeal but case was remanded for a new trial on the issue of damages, and trial court on remand determined damages and entered judgment thereupon, plaintiff was entitled to interest on that amount only from the date the later judgment was entered. *Yeager Garden Acres, Inc. v. Summit Const. Co.*, 32 Colo. App. 242, 513 P.2d 458 (1973).

Insurer paid interest from date judgment entered to date liability was paid. An insurer was obligated to pay all interest accruing on a judgment from the date of its entry to the date on which it paid the amount of its liability under the policy. *Houser v. Eckhardt*, 35 Colo. App. 155, 532 P.2d 54 (1974), *aff'd*, 191 Colo. 189, 552 P.2d 308 (1976).

To award a buyer the additional cost of cover as well as the entire benefit realized by the seller would be duplicative in the calculation of moratory interest in the case of a seller's wrongful withholding of property by breaching a sales contract. *Great W. Sugar Co. v. KN Energy, Inc.*, 778 P.2d 272 (Colo. App. 1989).

Section requires that prejudgment interest be awarded where money is wrongfully withheld. Because rescission is an equitable remedy, the court has discretion in determining the appropriate relief for the parties and such an award of prejudgment interest must be incorporated in the court's assessment of the equities. *Wall v. Foster Petroleum Corp.*, 791 P.2d 1148 (Colo. App. 1989).

Fact that amount due is disputed or unclear does not render a claim unliquidated for purposes of awarding interest under subsection (4). *Montgomery Ward & Co. v. State, Dept. of Rev.*, 675 P.2d 318 (Colo. App. 1983).

Interest awarded on judgment against natural gas pipeline company for refusal to honor contract to sell natural gas to buyer at a reduced, industrial rate may properly be calculated using "gas husbanding model", the equation being seller's return on rate base, plus seller's excess profits, minus seller's operating profit credit. *Great W. Sugar Co. v. KN Energy, Inc.*, 778 P.2d 272 (Colo. App. 1989).

To the extent that an award made under the statute provides double compensation for the same wrong, it cannot stand. The wording and legislative history of subsection (1)(a) and the commitment to fairness underlying the doctrine of moratory interest leads to the conclusion that the statute may not be used to impose double or other punitive damages. *Great W. Sugar Co. v. KN Energy, Inc.*, 778 P.2d 272 (Colo. App. 1989).

Interest from the time the action accrues is proper in a case where demand for payment is not an element of the plaintiff's case. *Deacon v. Am. Plant Food Corp.*, 782 P.2d 861 (Colo. App. 1989), *rev'd* on other grounds *sub nom. Stone's Farm Supply, Inc. v. Deacon*, 805 P.2d 1109 (Colo. 1991).

Wife is entitled to statutory interest from date of closing on her share of proceeds from home sale ordered as part of property division in a marital dissolution action. Such interest is proper to enforce the judgment. *In re Schutte*, 721 P.2d 160 (Colo. App. 1986); *In re Connell*, 831 P.2d 913 (Colo. App. 1992).

Without proof of defendant's gain, the statutory rate of interest applies. *Ballow v. PHICO Ins. Co.*, 878 P.2d 672 (Colo. 1994).

Standard applied in *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138 (10th Cir. 2000).

When jury's award does not distinguish between past and future wages, it still may be possible to apportion award based on a number of available formulas. *Shannon v. Colo. Sch. of Mines*, 847 P.2d 210 (Colo. App. 1992).

Date when a claim accrues for statute of limitations purposes is independent from the date of the wrongful withholding for the purpose of awarding interest. *Eads v. Dearing*, 874 P.2d 474 (Colo. App. 1993); *Loughridge v. Goodyear Tire & Rubber Co.*, 281 F. Supp. 2d 1252 (D. Colo. 2003), *aff'd*, 431 F.3d 1268 (10th Cir. 2005).

Where trial court found that wrongful withholding occurred in 1980, even though plaintiff did not discover the wrongful withholding until 1989, court correctly awarded interest from 1980. *Eads v. Dearing*, 874 P.2d 474 (Colo. App. 1993).

District court erred in awarding prejudgment interest from the time of the initial breach of express warranty since there were consequential damages that had not yet been incurred. Court should calculate prejudgment interest on each portion of the damages from the time each element of consequential damages was incurred. *Pegasus Helicopters, Inc. v. United Technologies Corp.*, 35 F.3d 507 (10th Cir. 1994).

Prejudgment interest awarded from date of breach of fiduciary duty, not date royalties would have been received. *Vento v. Colo. Nat'l Bank-Pueblo*, 907 P.2d 642 (Colo. App. 1995).

Prejudgment interest awarded from date embezzlement occurred, not the date employees discovered the financial problems caused by the embezzlement or date of discovery of negligence. *Porter Constr. Servs. v. Ehrhardt, Keefe, Steiner, and Hottman, P.C.*, 131 P.3d 1115 (Colo. App. 2005).

Prejudgment interest awarded from the date the money is wrongfully withheld or becomes due. In determining when payment is wrongfully withheld, formal demand or circumstances demonstrating a reasonable expectation of payment render the nonpayment wrongful. *Paratransit Risk Retention Group Ins. Co. v. Kamins*, 160 P.3d 307 (Colo. App. 2007).

Under subsection (1)(b), wrongful withholding of replacement cost damages occurs when plaintiff actually undertakes replacement expenditures. Prejudgment interest therefore begins to accrue on that date and not on the earlier date when the wrong subsequently remedied by the replacement expenditures actually occurred. *Goodyear Tire & Rubber Co. v. Holmes*, 193 P.3d 821 (Colo. 2008).

Interest payable for fraudulently obtained food stamps accrues from the time the state reimburses the federal government for the fraudulently obtained food stamps. Interest should accrue only from the time of the actual injury and the state suffers actual loss only when it reimburses the federal government. *Valenzuela v. People*, 893 P.2d 97 (Colo. 1995).

In breach of contract cases, action accrues when breach and damages occur, and prejudgment interest accrues from the time of the breach, not from the entry of judgment. *Bd. of County Comm'rs of Adams County v. City & County of Denver*, 40 P.3d 25 (Colo. App. 2001).

5-12-103. Greater rate may be stipulated.

(1) The parties to any bond, bill, promissory note, or other instrument of writing may stipulate therein for the payment of a greater or higher rate of interest than eight percent per annum, but not exceeding forty-five percent per annum, and any such stipulation may be enforced in any court of competent jurisdiction in the state, except as otherwise provided in articles 1 to 6 of this title. The rate of interest shall be deemed to be excessive of the limit under this section only if it could have been determined at the time of the stipulation by mathematical computation that such rate would exceed an annual rate of forty-five percent when the rate of interest was calculated on the unpaid balances of the debt on the assumption that the debt is to be paid according to its terms and will not be paid before the end of the agreed term.

(2) The term "interest" as used in this section means the sum of all charges payable directly or indirectly by a debtor and imposed directly or indirectly by a lender as an incident to or as a condition of the extension of credit to the debtor, whether paid or payable by the debtor, the lender, or any other person on behalf of the debtor to the lender or to a third party.

(3) The public policy of this state does not limit or prohibit contracting, agreeing, or stipulating in advance for the payment of interest on interest or compound interest.

(4) No law or public policy of this state limiting interest on interest, the adding of deferred interest to principal, or the compounding of interest shall apply to any promissory note secured by any mortgage or deed of trust or to one secured by a mortgage or deed of trust where periodic disbursement of part of the loan proceeds is made by a lender over a period of time as established by the mortgage or deed of trust, or over an expressed period of time, or ending with the death of the debtor, including, but not limited to, promissory notes secured by mortgages or deeds of trust having provisions for adding deferred interest to principal or otherwise providing for the charging of interest on interest.

(5) This section shall not apply to a commercial credit plan as defined in section 5-12-107 (8) and extensions of credit made pursuant thereto, unless the bond, bill, promissory note, instrument, or other written agreement evidencing the plan expressly states that it is subject to this section.

Source: L. 71: R&RE, p. 852, § 1. C.R.S. 1963: § 73-12-103. L. 72: p. 292, § 6. L. 75: (1) amended, p. 257, § 3, effective July 1. L. 79: (2) amended and (3) and (4) added, p. 317, § 1, effective July 1. L. 81: (4) amended, p. 396, § 33, effective June 8. L. 96: (5) added, p. 407, § 12, effective July 1.

COLORADO COMMENT

This section was amended to correspond to the usury limitations of Section 18-15-104 of the Colorado Criminal Code. This section now provides for a ceiling on interest of forty-five percent. (This same ceiling was added to Section 5-3-605.)

ANNOTATION

Law reviews. For note, "Colorado Interest Law", see 34 *Dicta* 398 (1957). For article, "The Revolution in Consumer Credit Legislation", see 45 *Den. L.J.* 679 (1968). For article, "Colorado Usury", see 11 *Colo. Law.* 2557 (1982). For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 *Colo. Law.* 753 (1986). For article, "An Update of Appendices from Collecting Pre- and Post-Judgment Interest in Colorado", see 15 *Colo. Law.* 990 (1986). For article, "Colorado Usury: The Sequel - Parts I and II", see 23 *Colo. Law.* 565 and 829 (1994).

Annotator's note. Since § 5-12-103 is similar to repealed § 73-1-3, C.R.S. 1963, § 73-1-3, CRS 53, CSA, C. 88, § 3, and laws antecedent to CSA, C. 88, § 3, relevant cases construing those provisions have been included in the annotations to this section.

There is no question regarding the authority of the general assembly to make the provision in this section that a rate of interest is a matter of contract which parties may evidence in writing. *Wigton v. Elliott*, 49 *Colo.* 115, 111 P. 713 (1910).

This section does not operate to preclude the general assembly from subsequently restricting interest rates by legislation. *Waddell v. Traylor*, 99 Colo. 576, 64 P.2d 1273 (1937).

Parties are at liberty under this section to stipulate for such rate of interest as they may see fit. *McKay's Estate v. Belknap Sav. Bank*, 27 Colo. 50, 59 P. 745 (1899).

National banks in Colorado have equal rights with others to collect interest upon loans at any agreed rate. *Rockwell v. Farmers' Nat'l Bank*, 4 Colo. App. 562, 36 P. 905 (1894).

National banks may make the rate dependent upon the happening of a contingency, if they so elect. *McKay's Estate v. Belknap Sav. Bank*, 27 Colo. 50, 59 P. 745 (1899).

Contingent amounts of interest cannot be considered when determining whether a contractual rate of interest is usurious. *Beeler v. H & R Block of Colo., Inc.*, 487 P.2d 569 (1971); *Uniwest Mortgage Co. v. Dadecon Condominiums, Inc.*, 877 F.2d 431 (5th Cir. 1989).

Nonpayment of principal or interest when due. It is competent for the parties to agree upon an increased rate contingent upon nonpayment of either principal or interest when due. *McKay's Estate v. Belknap Sav. Bank*, 27 Colo. 50, 59 P. 745 (1899); *In Re Wood Family Interests, Ltd.*, 135 Bankr. 407 (Bankr. D. Colo. 1989).

Usurious interest rate enforceable at maximum allowable rate. If a note has a higher interest rate than is allowed by this section, it will be invalid to the extent that the interest rate is usurious, but it will still be enforced at the maximum allowable rate. *Becker v. Marketing & Research Consultants, Inc.*, 526 F. Supp. 166 (D. Colo. 1981); *Brown v. Fenner*, 757 P.2d 184 (Colo. App. 1988); *Concord Realty v. Cont'l Funding*, 776 P.2d 1114 (Colo. 1989).

Parties to contract are free to set rate of interest by mutual agreement. *Martinez v. Cont'l Entrs.*, 730 P.2d 308 (Colo. 1986).

The parties to a note unquestionably have the right to stipulate that a larger rate should be paid upon the failure to pay a smaller one when due; such stipulation may be enforced in any court of competent jurisdiction. *McKay's Estate v. Belknap Sav. Bank*, 27 Colo. 50, 59 P. 745 (1899); *In Re Wood Family Interests, Ltd.*, 135 Bankr. 407 (Bankr. D. Colo. 1989).

Stipulation in a promissory note of an increased rate of interest after maturity is not a penalty. *Godsmark v. Bennett's Estate*, 52 Colo. 198, 120 P. 151 (1912).

Rather, a stipulation for interest after maturity of a note is regarded as damages for breach of contract. *Browne v. Steck*, 2 Colo. 70 (1873).

The parties may stipulate that a larger rate be paid so long as the rate bears a reasonable relation to the current rate of interest. *Browne v. Steck*, 2 Colo. 70 (1873).

The rate of interest agreed upon in writing must be allowed according to the terms of an agreement until the entry of judgment. *McKay's Estate v. Belknap Sav. Bank*, 27 Colo. 50, 59 P. 745 (1899).

When, at the place of contract, the rate of interest differs from that of the place of payment, the parties may stipulate for either rate, and the

contract will govern, the parties having the right of election as to the law of which place their contract is to be governed. *McKay's Estate v. Belknap Sav. Bank*, 27 Colo. 50, 59 P. 745 (1899).

Where no evidence is introduced of the current rate of interest, the party's stipulation may be accepted. *Browne v. Steck*, 2 Colo. 70 (1873).

If rate specified greatly exceeds the real value of money it will be disallowed as a penalty. Under this section the parties may determine the value of the use of money before it falls due, and their estimate of its value, after it falls due, is the true measure of damages, until it is shown to be incorrect. Since the law seeks to indemnify the plaintiff for the loss he has suffered by the breach of contract, the rate fixed by the parties affords a just rule of indemnity. If, however, the rate of interest specified in the contract greatly exceeds the real value of the money, it is a penalty for the nonpayment of the principal sum, rather than a just recompense for detaining it, and will not be allowed. *Browne v. Steck*, 2 Colo. 70 (1873).

Such a provision is waived by the acceptance of interest at the original rate after maturity. *Godsmark v. Bennett's Estate*, 52 Colo. 198, 120 P. 151 (1912).

Furthermore, when interest becomes due it represents an indebtedness which the interested parties may then make the subject of a new contract by stipulating in writing when and how it shall be paid and what rate of interest it shall bear until paid, inasmuch as after interest becomes due, it may, by agreement, be turned into principal and bear interest. *Hochmark v. Richler*, 16 Colo. 263, 26 P. 818 (1891); *Wigton v. Elliott*, 49 Colo. 115, 111 P. 713 (1910), distinguishing *Denver Brick & Mfg. Co. v. McAllister*, 6 Colo. 261 (1882).

Such an arrangement is not compounding interest. *Wigton v. Elliott*, 49 Colo. 115, 111 P.713 (1910).

Compound interest contracted for in advance is, in general, not recoverable. *Hochmark v. Richler*, 16 Colo. 263, 26 P. 818 (1891).

Such a contract is per se unlawful. *Hochmark v. Richler*, 16 Colo. 263, 26 P. 818 (1891).

The fact that compound interest is provided for does not, however, render the entire contract usurious and void; rather upon grounds of public policy, simply decline to enforce payment of the interest upon interest. *Hochmark v. Richler*, 16 Colo. 263, 26 P. 818 (1891).

A promise for such made after interest has accrued is legal. A promise to pay compound interest made after instead of before the interest to be compounded has accrued is legal and enforceable. *Hochmark v. Richler*, 16 Colo. 263, 26 P. 818 (1891).

Though compound interest is allowable only when there is a definite agreement for such. *Tarabino Real Estate Co. v. Tarabino*, 109 Colo. 425, 126 P.2d 859 (1942).

Moreover, "instrument of writing" must express mutuality of contract. This section clearly implies that the "instrument of writing" referred to must be one expressing mutuality of contract. *Cobb v. Stratton's Estate*, 56 Colo. 278, 138 P. 35 (1914).

A will is not within section. A will does not rest on contract relations, and is therefore not an instrument into which a stipulation between the parties

for interest, as contemplated by this section, could be injected. *Cobb v. Stratton's Estate*, 56 Colo. 278, 138 P. 35 (1914).

Hence, no interest is allowed on legacies. Since there is nothing in this section, either express or implied, providing for interest on legacies, none is allowable. *Cobb v. Stratton's Estate*, 56 Colo. 278, 138 P. 35 (1914).

Late charges provided for in connection with a nonconsumer credit arrangement were reasonable as a matter of law and enforceable where charges constituted a "default interest" charge for debtor's failure to pay off the note according to its terms and the rate per annum was less than 45%. *Dikeou v. Dikeou*, 928 P.2d 1286 (Colo. 1996).

Colorado Revised Statutes
Title 18 Criminal Code
Article 15 Offenses - Making, Financing or Collecting of Loans

18-15-104. Engaging in criminal usury.

(1) Any person who knowingly charges, takes, or receives any money or other property as a loan finance charge where the charge exceeds an annual percentage rate of forty-five percent or the equivalent for a longer or shorter period commits the crime of criminal usury, which is a class 6 felony.

(2) It is an affirmative defense to criminal usury for a person, or his agent or assignee, who charges, takes, or receives money or property as a loan finance charge in excess of an annual percentage rate of forty-five percent in either of the following circumstances:

(a) That at the time of making the loan finance charge it could not have been determined by a mathematical computation that the annual percentage rate would exceed an annual percentage rate of forty-five percent;

(b) That the loan finance charge was not in excess of an annual percentage rate of forty-five percent when the rate of the finance charge was calculated on the unpaid balance of the debt on the assumption that the debt is to be paid according to its terms and is not paid before the end of the agreed term.

(3) The affirmative defenses referred to in subsection (2) of this section shall only apply when the provisions relating to the loan finance charge are set forth in a written agreement signed by all the parties and such written agreement is submitted to the court and the district attorney at least ten days prior to trial.

(4) This section shall not apply to:

(a) Charges and fees permitted by articles 1 to 6 of title 5, C.R.S., or charges and fees that are similar to such charges and fees and are specifically authorized by law;

(b) Credit card charges and fees not exceeding those permitted for consumer transactions under articles 1 to 6 of title 5, C.R.S., when imposed upon or collected from a person or in a transaction not subject to said provisions;

(c) A reverse mortgage as defined in section 11-38-102, C.R.S.; and

(d) Additional interest charges permitted by section 5-12-107 (3), C.R.S.