

CHECKLIST · CONVERTIBLE NOTES

Convertible Note Red Flags

A 10-point drafting checklist for Florida founders, sponsors, and investors raising convertible debt across state lines. Each item is a structural pattern we have seen blow up post-closing.

01. Floating-price conversion discount

Discount to VWAP/market triggers Adar Bays in NY — the conversion option counts as interest, and rates above 25% void the note from inception.

02. Conversion discount above 25%

Steep discounts on short maturities imply annualized yields that cross criminal-usury thresholds in NY (25%) and FL (25% misdemeanor / 45% felony).

03. Original issue discount (OID) without disclosure

Funding less than face stacks on top of stated interest plus conversion premium. All three count as interest under most state usury statutes.

04. No governing-law clause selecting Delaware

Delaware insulates corporate borrowers from usury defense (6 Del C § 2306). Default to DE law plus a DE-incorporated issuer wherever defensible.

05. Missing usury savings clause

Texas and California allow unintentional usury to be cured by refund + downward adjustment if a savings clause is in place. Never omit it.

06. Maturity shorter than 12 months on a deep-discount note

Implied yield = (conversion premium + accrued interest) / principal / years. Shrinking the denominator multiplies the yield.

07. California-resident investor without exemption analysis

California civil usury at 10% reaches non-exempt loans. The corporate exemption requires \$300k loan OR \$2M assets AND pre-existing relationship AND non-personal use.

08. Issuer not a Delaware C-corp

Florida LLC or sole-proprietor issuers can lose the corporate civil usury exemption. The criminal cap still applies regardless under FL Stat. § 687.071.

09. Conversion mechanics tied to discretionary triggers

If the lender controls timing or pricing of conversion, courts treat the option as more valuable — pushing the implied yield higher in the usury calculation.

10. No model of implied yield at the earliest conversion date

Run the math at the earliest plausible conversion date, not at maturity. The aggressive case is the one carriers and courts focus on.

Open the free calculator:

montague.law/entrepreneur-forms/convertible-note-calculator/

Full guide:

montague.law/blog/convertible-notes-usury-jurisdictions-2026/

Talk to a lawyer: **904-234-5653**

Schedule:

montague.law/contact-schedule-a-time-with-john/

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