

Bay Harbor Islands, Florida, False Claims Ordinance

As enacted by Ord. No. 717, March 12, 2003.

- (1) This article shall be known and may be cited as the Bay Harbor Islands False Claim Ordinance.
- (2) The purpose of the Bay Harbor Islands False Claim Ordinance is to deter persons from knowingly causing or aiding in causing the government to pay claims that are false, fraudulent, or inflated, and to provide remedies for obtaining reple damage and civil penalties for the person when money is sought or obtained from the government as a result of a false claim;
- (3) The provisions of this article are not exclusive, and the remedies provided for in this article

- (1) The follo ing ac ion() hall con i e a iola ion of hi ar icle:
- (a) An per on ho kno ingl pre en or ca e o be pre en ed o he o n or o an officer, emplo ee, agen or con l an of he o n, a fal e or fra d len claim for pa men or appro al;
 - (b) An per on ho kno ingl make , e , or ca e o be made or ed, a fal e record or a emen o ge a fal e, fra d len , or infla ed claim paid or appro ed b he o n;
 - (c) An per on ho con pire o defra d he o n b facili a ing he pa men of a fal e, fra d len , or infla ed claim allo ed or paid b he o n;
 - (d) An per on ho deli er , i h he in en o defra d he o n, good or er ice of differen q ali or q an i han ha pecified in he applicable con rac or pecifica ion;
 - (e) An per on ho i a hori ed o make or deli er a doc men cer if ing receipt of proper ed, or o be ed, b he o n and, in ending o defra d he o n, make or deli er he receipt i ho comple el kno ing ha he informa ion on he receipt i r e;
 - (f) An per on ho kno ingl b , or recei e a a pledge of an obliga ion or deb , p blic proper from an officer, emplo ee, or agen of he o n ho la f ll ma no ell or pledge he proper ; or
 - (g) An per on ho kno ingl make , e , or ca e o made or ed, a fal e record or a emen o conceal, a oid, or decrea e an obliga ion o pa or ran mi mone or proper o he o n.
- (2) An beneficiar of an inad er en bmi ion of a fal e claim o he o n, ho b eq en l di co er he fal i of he claim, and ho fail o di clo e he fal i of he claim o he o n i hin 30 da of di co ering he error, hall al o be fo nd o ha e bmi ed a fal e claim o he o n.
- (3) An per on fo nd o ha e bmi ed a fal e claim o he o n hall:
- (a) Be liable o he o n for an amo n eq al o hree ime ha par of he claim hich i fal e, fra d len , or infla ed;
 - (b) Immedia el , f ll , and irre ocabl forfei he en ire amo n of he claim;
 - (c) Be liable o he o n for all co and fee (incl ding, i ho limi a ion, rea onable legal, e per , and con ling fee) inc rred b he o n o re ie , defend, e al a e and or li ga e or arbi ra e he fal e claim; and
 - (d) Be bjec o debarmen from o n con rac ing p r an o he To n Code and o her i e, for a period of fi e ear . Addi ionall , an per on ho cer ified a claim la er fo nd o be fal e hall be bjec o debarmen from o n con rac ing for a period of o o fi e ear . Debarmen nder hi ar icle ma be gran ed b a co r of compe en j ri dic ion a par of he relief req e ed in he complain filed i h he co r .
- (4) Liabili nder hi ec ion hall be join and e eral for an ac commi ed b o or more per on .

action and copies of all deposition transcripts. When the person bringing the action proceeds with the claim, the court may permit the person to take over the action on behalf of the person at large and upon a showing of good cause.

- (3) Nothing in this article shall be construed to limit the authority of the person or the complainant, proceeding pursuant to section 14-74(2), to compromise a claim brought in a complaint filed under this article if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

A civil action under this article may not be brought:

- (1) More than five years after the date when the fact material to the right of action are known or reasonably should have been known by the person official charged with the responsibility to act in the circumstances, but in no event more than seven years after the date on which the violation of section 14-73 is committed, whichever occurs later; or
- (2) In the event an person files a civil action which contains false claim, in whole or part, the person may not be permitted to recover claim in whole the limitation of paragraph (1) herein above.

- (1) If the person proceeds with and prevails in an action brought by a person under this article, except as provided in subsection (2), the court shall order the distribution of the person of ten percent of the proceeds recovered under an judgment obtained by the person in an action under section 14-73 or of the proceeds of an settlement of the claim.
- (2) If the person proceeds with an action which the court finds to be based primarily on disclosure of specific information, other than has provided by the person initiating the action, relating to allegation or transaction in a criminal, civil, or administrative hearing; a legislative, administrative, or inspection or general report, hearing, audit, or investigation; or from the news media, the court may award a claimant a percentage of the proceeds recovered under a judgment or received in settlement of a claim under this article, taking into account the significance of the information and the role of the person bringing the action in advancing the cause of litigation.
- (3) If the person does not proceed with an action under this article and does not voluntarily dismiss the action pursuant to section 14-75(1), the person bringing the action or settling the claim shall receive 25 percent of the proceeds recovered under a judgment rendered in an action under this article or in settlement of a claim under this article, with the balance going to the person.
- (4) An payment under this section of the person bringing the action shall be paid only out of the proceeds recovered from the defendant.
- (5) Whether or not the person proceeds with the action, if the court finds that the action was brought by a person who planned, initiated, or furthered the violation of section 14-73 upon which the action was brought, the person shall be dismissed from the civil action and shall not receive

an share of the proceed of the action. Such disclaimer shall not prejudice the right of the person continuing the action.

- (1) If the person initiates an action under this article or assumes control of an action brought by a person under this article, and the person prevails in such action, the person shall be awarded reasonable attorney's fee, expenses, and costs.
- (2) If the court awards the person bringing the action proceed under this article, the person shall also be awarded an amount for reasonable attorney's fee and costs. Payment for reasonable attorney's fee and costs shall be made from the recovered proceed before the distribution of an award.
- (3) If the person does not proceed with an action under this article and the defendant initiates the prevailing party, the court shall award the defendant reasonable attorney's fee and costs against the person bringing the action.
- (4) No liability shall be incurred by the person for an expense, attorney's fee, or other cost incurred by any person in bringing or defending an action under this article, except as otherwise specifically provided by law.

- (1) In no event may a person bring an action under section 14-73 based upon allegation or information that are the subject of a civil action or an administrative proceeding in which the person is already a party.
- (2) No court shall have jurisdiction over an action brought under this article based upon the public disclosure of allegation or information in a criminal, civil, or administrative hearing; in a legislative, administrative, or inspection or general report, hearing, audit, or investigation; or from the news media, unless the action is brought by the person, or unless the person bringing the action is an original source of the information. For purposes of this subsection, the term "original source" means an individual who has direct and independent knowledge of the

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An emplo ee ho i di charged, demo ed, pended, hrea ened, hara ed, or in an o her manner di crimina ed again in he erm or condi ion of emplo men b hi or her emplo er beca e of la f l ac done b he emplo ee in f r herance of an ac ion nder hi ar icle, incl ding in e iga ion for, e imon for, or a i ance in an ac ion filed or o be filed nder hi ar icle, hall ha e a ca e of ac ion nder F.S., 112.3187.

- (1) Whene er prac icable, bid pecifica ion for o n con rac hall con ain a req iremen ha he cce f l bidder main ain, a a condi ion preceden o bmi ing a claim again he o n, a final bid akeoff. The final bid akeoff hall con ain a line item for alloca ion of o erhead co .
- (2) Upon req e from he o n, a con rac or making a claim again he o n for dela or o her damage hall bmi , i hin 20 da , a cop of he final bid akeoff, cer ified p r an o hi b ec ion. Fail re o pro ide he req e ed cer ifica ion hall con i e a forfei re of he claim for dela or o her damage . The cer ifica ion hall be bmi ed nder oa h b a per on f ll a hori ed b he claiman and hall con ain a a emen ha :
 - (a) The final bid akeoff a prepared con emporaneo l i h he bid and in an icipa ion of he bid for he projec ;
 - (b) The con rac or relied on he final bid akeoff o prepare he bid and he original ched le of al e ; and
 - (c) The final bid akeoff ha no been al ered in an a .
- (3) An claim for e ended o erhead co ha e ceed , on a per diem ba i , more han en percen of he o erhead per diem con ained in he final bid akeoff hall be pre med o be a fal e claim, and he con rac or hall ha e he b rden of pro ing ha an ch claim for e ended o erhead i no fal e.

The pro i ion of hi ar icle hall no appl if he claiman can demon ra e, b he grea er eigh of he e idence, each of he follo ing fac :

- (1) The claiman bmi ed or ca ed o ha e bmi ed he claim o or again he o n rea onabl belie ing ha ch claim a free of an ma erial mi a emen , or an e aggera ed, infla ed, or n b an ia ed a er ion or damage ;
- (2) The claiman had no rea onable ba i o do b he r h, eraci , or acc rac of ch claim a he ime i a bmi ed;

- (3) Prior o b m i n g he claim, he claiman diligen l i n e i g a e d he fac n d e r l i n g ch claim and prepared he claim in a rea o n a b l e m a n n e r g i e n a l l he rele a n i n f o r m a t i o n a a i l a b l e ; a n d
- (4) W h e n i n f o r m a t i o n i n d i c a t i n g h a a n e l e m e n t , a e m e n t , o r a l l e g a t i o n i n he claim a f a l s e o r m i l e a d i n g f i r b e c a m e a a i l a b l e , ch claiman , i h f i e b i n e d a o f d i c o e r i n g he fal i o f he claim, o o k i m m e d i a e e p o m o d i f , c o r r e c , o r i h d r a ch claim and p r o i d e d he o n i h i m m e d i a e n o i c e h e r e o f .

- (1) T h i a r t i c l e h a l l b e l i b e r a l l c o n r e d o e f f e c a e i r e m e d i a l a n d d e e r r e n p r o e .
- (2) I f a n p r o i o n o f h i a r t i c l e o r i a p p l i c a t i o n o a n p a r i c l a r p e r o n o r c i r c m a n c e i h e l d i n a l i d , h a p r o i o n o r i a p p l i c a t i o n i e e r a b l e a n d d o e n o a f f e c t h e a l i d i o f o h e r p r o i o n o r a p p l i c a t i o n o f h i a r t i c l e .