

Bay Harbor Islands False Claims Ordinance

Chapter 14. OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE V. FALSE CLAIMS

§ Sec. 14-70 Short title; purpose.

(1) This article shall be known and may be cited as the Bay Harbor Islands False Claims Ordinance.

(2) The purpose of the Bay Harbor Islands False Claims Ordinance is to deter persons from knowingly causing or assisting in causing the town to pay claims that are false, fraudulent, or inflated, and to provide remedies for obtaining treble damages and civil penalties for the town when money is sought or obtained from the town by reason of a false claim;

(3) The provisions of this article are not exclusive, and the remedies provided for in this article shall be in addition to any other remedies provided for in any other law, or available under common law, or otherwise.

(4) This article shall be liberally construed and applied to promote the public interest.

§ Sec. 14-71 Definitions.

The following terms and phrases when used in this article shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

Bid takeoff means the final estimate, tabulation, or worksheet prepared by the contractor in anticipation of the bid submitted, and which shall reflect the final bid price.

Claim means any invoice, statement, request, demand, lawsuit, or action under contract or otherwise, for money, property, or services made to any employee, officer, or agent of the town, or to any contractor, grantee, or other recipient if any portion of the money, property, or services required or demanded was issued from, or was provided by, the town (hereinafter "town funds").

Claimant means any person or entity (including all officers, directors, employees or agents thereof who authorize, or participate) that brings, submits, files, maintains, or pursues a claim against the town.

Extended overhead means the amount of a claim relating to an increase in overhead costs resulting from a delay in contract performance that is not compensated by a markup of direct costs.

Knowing or *knowingly* means that a person, with respect to information:

- (a) Has actual knowledge of the information;
- (b) Acts in deliberate ignorance of the truth or falsity of the information; or

(c) Acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required. However, innocent mistake shall be a defense to an action under this article.

Overhead per diem means the amount calculated by dividing the total overhead costs set forth in the final bid takeoff by the number of days for substantial completion of the work set forth in the contract.

Person means any natural person, corporation, firm, association, organization, partnership, limited partnership, agency, limited liability company, business, trust, attorney at law, or other similar individuals, firms, associations, or agency.

Town means the government of Bay Harbor Islands or any department, division, bureau, section, commission, planning agency, board, district, authority, agency, or instrumentality of the town.

§ Sec. 14-72 Certification of claims.

(1) Upon the request of the town, the person submitting a claim shall, within 30 calendar days, including Saturdays, Sundays, and legal holidays, submit a certified claim as defined by this section. A "certified claim" shall be made under oath by a person duly authorized by the claimant, and shall contain a statement that:

(a) The claim is made in good faith;

(b) The claim's supporting data are accurate and complete to the best of the person's knowledge and belief;

(c) The amount of the claim accurately reflects the amount that the claimant believes is due from the town;

(d) The person certifying the claim has personally reviewed all supporting data; and

(e) The certifying person is duly authorized by the claimant to certify the claim.

(f) Further, all certified claims shall contain the following statement directly above the signature line of the certifying person, in 12-point bold type:

Any person who knowingly presents or causes to be presented, to the town a false or fraudulent claim for payment or approval or uses or causes to be made or used a false record or statement, or conspires to get a false, fraudulent or inflated claim paid by the town, or delivers, with the intent to defraud, goods or services of different quality than specified, or executes a receipt of property used or to be used by the town without completely knowing that the information on the receipt is true, or knowingly makes, uses or causes to be made or used a false record or statement

to conceal, avoid or decrease an obligation to pay or transmit money or property to the town, shall be liable to the town for an amount equal to three times that part of the claim which is false, fraudulent, or inflated, plus all costs and fees incurred by the town. Any person found to have submitted a false claim shall immediately, fully and irrevocably forfeit the entire amount of the claim and be subject to debarment from town contracting for a period of five years. Liability shall be joint and several for any act committed by two or more persons.

(2) Failure to provide the required certification within the prescribed 30-day period shall constitute a forfeiture of the entire claim.

§ Sec. 14-73 Liability for false claims; penalties.

(1) The following action(s) shall constitute a violation of this article:

(a) Any person who knowingly presents or causes to be presented to the town or to any officer, employee, agent or consultant of the town, a false or fraudulent claim for payment or approval;

(b) Any person who knowingly makes, uses, or causes to be made or used, a false record or statement to get a false, fraudulent, or inflated claim paid or approved by the town;

(c) Any person who conspires to defraud the town by facilitating the payment of a false, fraudulent, or inflated claim allowed or paid by the town;

(d) Any person who delivers, with the intent to defraud the town, goods or services of different quality or quantity than that specified in the applicable contract or specification;

(e) Any person who is authorized to make or deliver a document certifying receipt of property used, or to be used, by the town and, intending to defraud the town, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(f) Any person who knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer, employee, or agent of the town who lawfully may not sell or pledge the property; or

(g) Any person who knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the town.

(2) Any beneficiary of an inadvertent submission of a false claim to the town, who subsequently discovers the falsity of the claim, and who fails to disclose the falsity of

the claim to the town within 30 days of discovering the error, shall also be found to have submitted a false claim to the town.

(3) Any person found to have submitted a false claim to the town shall:

(a) Be liable to the town for an amount equal to three times that part of the claim which is false, fraudulent, or inflated;

(b) Immediately, fully, and irrevocably forfeit the entire amount of the claim;

(c) Be liable to the town for all costs and fees (including, without limitation, reasonable legal, expert, and consulting fees) incurred by the town to review, defend, evaluate and or litigate or arbitrate the false claim; and

(d) Be subject to debarment from town contracting pursuant to the Town Code and otherwise, for a period of five years. Additionally, any person who certified a claim later found to be false shall be subject to debarment from town contracting for a period of two to five years. Debarment under this article may be granted by a court of competent jurisdiction as part of the relief requested in the complaint filed with the court.

(4) Liability under this section shall be joint and several for any act committed by two or more persons.

§ Sec. 14-74 Intervention by third parties in civil actions for false claims.

(1) The town manager, or his/her designee, may investigate a violation under section 14-73. If the town manager or designee finds that a person has violated or is violating section 14-73, he or she may bring a civil action against the person on behalf of the town and shall inform the town council of the action to be taken.

(2) A resident of the town or person in privity of contract under which the false claim was made may bring a civil action for a violation of section 14-73 for the person and for the town. Civil actions instituted under this article shall be governed by the Florida Rules of Civil Procedure and shall be brought in the name of the town.

(a) The complaint shall be identified on its face as a qui tam action and shall be filed under seal in the circuit court of the Eleventh Judicial Circuit, in and for Miami-Dade County. Immediately upon filing of a complaint by a person, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the town manager and town attorney by registered mail, return receipt requested. The town manager may elect to proceed with the action, in lieu of the qui tam plaintiff, on behalf of the town, within 180 days after he or she receives both the complaint and the material evidence and information.

(b) The town manager, for good cause shown, may petition the court to extend the time during which the complaint remains under seal under subsection (a). Any such motion may be supported by affidavits or other submissions in camera. The defendant is not required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant in accordance with law.

(c) Before the expiration of the 180-day period or any extensions obtained under subsection (b), the town manager shall:

i. Proceed with the action, in which case the action is conducted by the town attorney or special counsel on behalf of the town; or

ii. Notify the court that the town declines to take over the action, in which case the person bringing the action has the right to conduct the action.

(d) When a person files an action under this section, no person other than the town manager on behalf of the town may intervene or bring an action under this article based on the facts underlying the pending action.

§ Sec. 14-75 Rights of the parties in civil actions.

(1) If the town manager, on behalf of the town, elects to proceed with the action, he or she has the primary responsibility for prosecuting the action, and is not bound by any prior or subsequent act(s) of the person bringing the action. The town may also voluntarily dismiss the action notwithstanding the objections of the person bringing the action.

(2) If the town manager elects not to proceed with the action and does not voluntarily dismiss the action, the person bringing the action has the right to conduct the action. If the town manager so requests, he or she shall be served with copies of all pleadings and motions filed in the action and copies of all deposition transcripts. When the person bringing the action proceeds with the claim, the court may permit the town to take over the action on behalf of the town at a later date upon a showing of good cause.

(3) Nothing in this article shall be construed to limit the authority of the town or the qui tam plaintiff, 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 facts material to the right of action are known or reasonably should have been known by the town 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 last; or

(2) In the event any person files a civil action which contains false claims, in whole or part, the town may pursue its remedies by counterclaim without the limitations of subparagraph (1) hereinabove.

§ Sec. 14-76 Awards to plaintiffs bringing action.

(1) If the town 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 to the person of ten percent of the proceeds recovered under any judgment obtained by the town in an action under section 14-73 or of the proceeds of any settlement of the claim.

(2) If the town proceeds with an action which the court finds to be based primarily on disclosures of specific information, other than that provided by the person initiating the action, relating to allegations or transactions in a criminal, civil, or administration hearing; a legislative, administrative, or inspector general report, hearing, audit, or investigation; or from the news media, the court may award such sums as it considers appropriate, but in no case more than five percent 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 case to litigation.

(3) If the town 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 town.

(4) Any payment under this section to the person bringing the action shall be paid only out of the proceeds recovered from the defendant.

(5) Whether or not the town 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 any share of the proceeds of the action. Such dismissal shall not prejudice the right of the town to continue the action.

§ Sec. 14-77 Expenses; attorney's fees and costs.

(1) If the town initiates an action under this article or assumes control of an action brought by a person under this article, and the town prevails in such action, the town shall be awarded its reasonable attorney's fees, expenses, and costs.

(2) If the court awards the person bringing the action proceeds under this article, the person shall also be awarded an amount for reasonable attorney's fees and costs. Payment for reasonable attorney's fees and costs shall be made from the recovered proceeds before the distribution of any award.

(3) If the town does not proceed with an action under this article and the defendant is the prevailing party, the court shall award the defendant reasonable attorney's fees and costs against the person bringing the action.

(4) No liability shall be incurred by the town for any expenses, attorney's fees, or other costs incurred by any person in bringing or defending an action under this article, except as otherwise specifically provided by law.

§ Sec. 14-78 Exemptions to civil actions.

(1) In no event may a person bring an action under section 14-73 based upon allegations or transactions that are the subject of a civil action or an administrative proceeding in which the town is already a party.

(2) No court shall have jurisdiction over an action brought under this article based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, or inspector general report, hearing, audit, or investigation; or from the news media, unless the action is brought by the town, 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 information on which the allegations are based and has voluntarily provided the information to the town manager before filing an action under this article based on the information and who is not an employee or agent of the town.

(3) No court shall have jurisdiction over an action where the person bringing the action under section 14-73 is:

(a) Acting as an attorney for the town; or

(b) An employee or former employee of the town, and the action is based, in whole or in part, upon information obtained in the course or scope of town employment.

(4) No court shall have jurisdiction over an action where the person bringing the action under section 14-73 obtained the information from an employee or former employee of the town.

§ Sec. 14-79 Protection for participating employees.

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms or conditions of employment by his or her employer because of lawful acts done by the employee in furtherance of an action under this article, including investigation for, testimony for, or assistance in an action filed or to be filed under this article, shall have a cause of action under F.S., 112.3187.

§ Sec. 14-80 Burden of proof; presumption of false claim.

- (1) Whenever practicable, bid specification for town contracts shall contain a requirement that the successful bidder maintain, as a condition precedent to submitting a claim against the town, a final bid takeoff. The final bid takeoff shall contain a line item for allocation of overhead costs.
- (2) Upon request from the town, a contractor making a claim against the town for delay or other damages shall submit, within 20 days, a copy of the final bid takeoff, certified pursuant to this subsection. Failure to provide the requested certification shall constitute a forfeiture of the claim for delay or other damages. The certification shall be submitted under oath by a person fully authorized by the claimant and shall contain a statement that:
 - (a) The final bid takeoff was prepared contemporaneously with the bid and in anticipation of the bid for the project;
 - (b) The contractor relied on the final bid takeoff to prepare the bid and the original schedule of values; and
 - (c) The final bid takeoff has not been altered in any way.
- (3) Any claim for extended overhead cost that exceeds, on a per diem basis, more than ten percent of the overhead per diem contained in the final bid takeoff shall be presumed to be a false claim, and the contractor shall have the burden of proving that any such claim for extended overhead is not false.

§ Sec. 14-81 Innocent claimant affirmative defense.

The provisions of this article shall not apply if the claimant can demonstrate, by the greater weight of the evidence, each of the following facts:

- (1) The claimant submitted or caused to have submitted the claim to or against the town reasonably believing that such claim was free of any material misstatements, or any exaggerated, inflated, or unsubstantiated assertions or damages;
- (2) The claimant had no reasonable basis to doubt the truth, veracity, or accuracy of such claim at the time it was submitted;
- (3) Prior to submitting the claim, the claimant diligently investigated the facts underlying such claim and prepared the claim in a reasonable manner given all the relevant information available; and
- (4) When information indicating that any element, statement, or allegation in the claim was false or misleading first became available, such claimant, with five business days of discovering the falsity of the claim, took immediate steps to modify, correct, or withdraw such claim and provided the town with immediate notice thereof.

§ Sec. 14-82 Construction and severability of provisions.

(1) This article shall be liberally construed to effectuate its remedial and deterrent purposes.

(2) If any provision of this article or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this article.