



**REMEDIES TO CORRUPTION**  
*Quo Warranto*  
**&**  
*New Mexico's Fraud Against Taxpayers Act*

**February 4, 2022**  
*NM School Boards Association*

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**SPEAKER BIO**

- Audrey J. Jaramillo, CPA, CFE has been serving federal, state, and local Governments, non-profits, and commercial entities for 23+ years throughout NM and is Managing Partner of Jaramillo Accounting Group, LLC.
- She has trained on various topics for the AICPA, NM AGA, NM ASBO, NM GFOA, NMSBA, NM State Auditor, and other organizations and recently obtained her Juris Master (J.M.) degree in American Law.
- She is passionate about public service and served 8 years on her local school Board of Education and currently serves as Mayor of the Town of Edgewood.






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## SPEAKER BIO



- Jerry Powers is a homebuilder and general contractor. He was Executive Director of the New Mexico Private Property Rights Coalition from 1998-2002 and now serves as *Mayor Pro Tem* for the Town of Edgewood.
- He came out of retirement in 2020 to serve the Town by fighting AGAINST corruption and FOR open and transparent government.
- Jerry was one of the grassroots community leaders of Citizens for an Open and Responsible Edgewood (CORE) and led the group to attain momentous results.

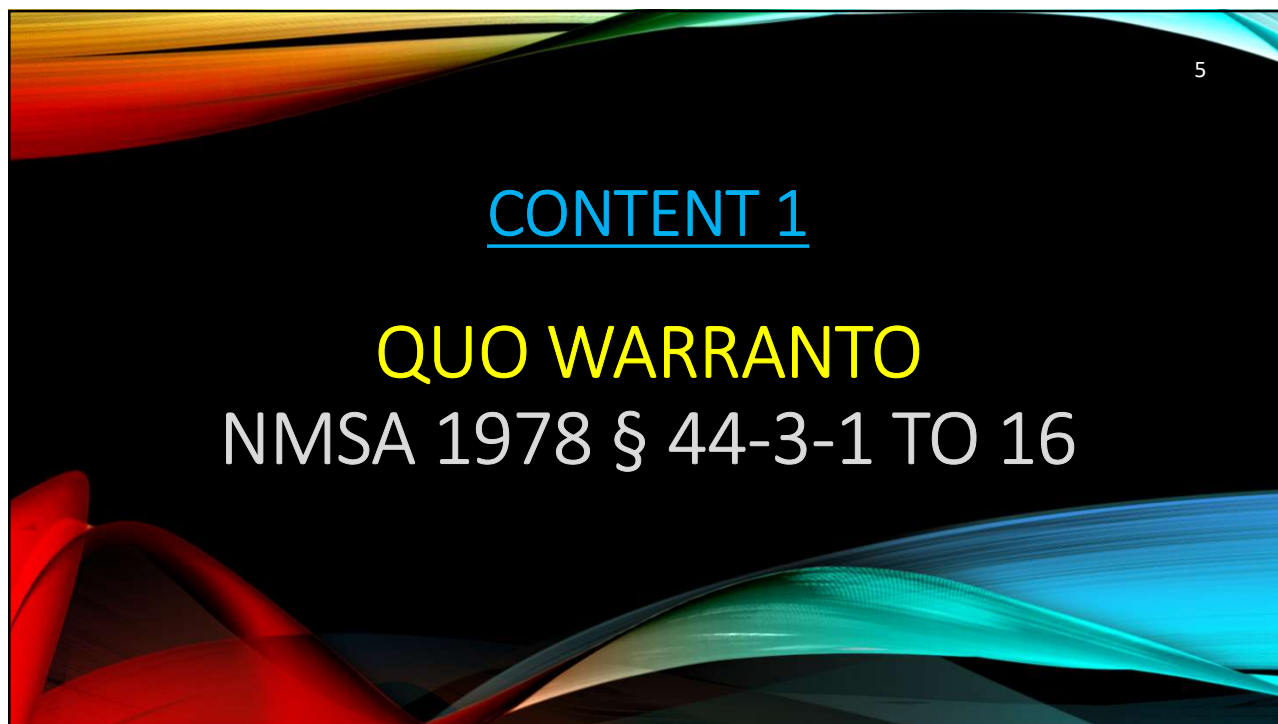
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## Question

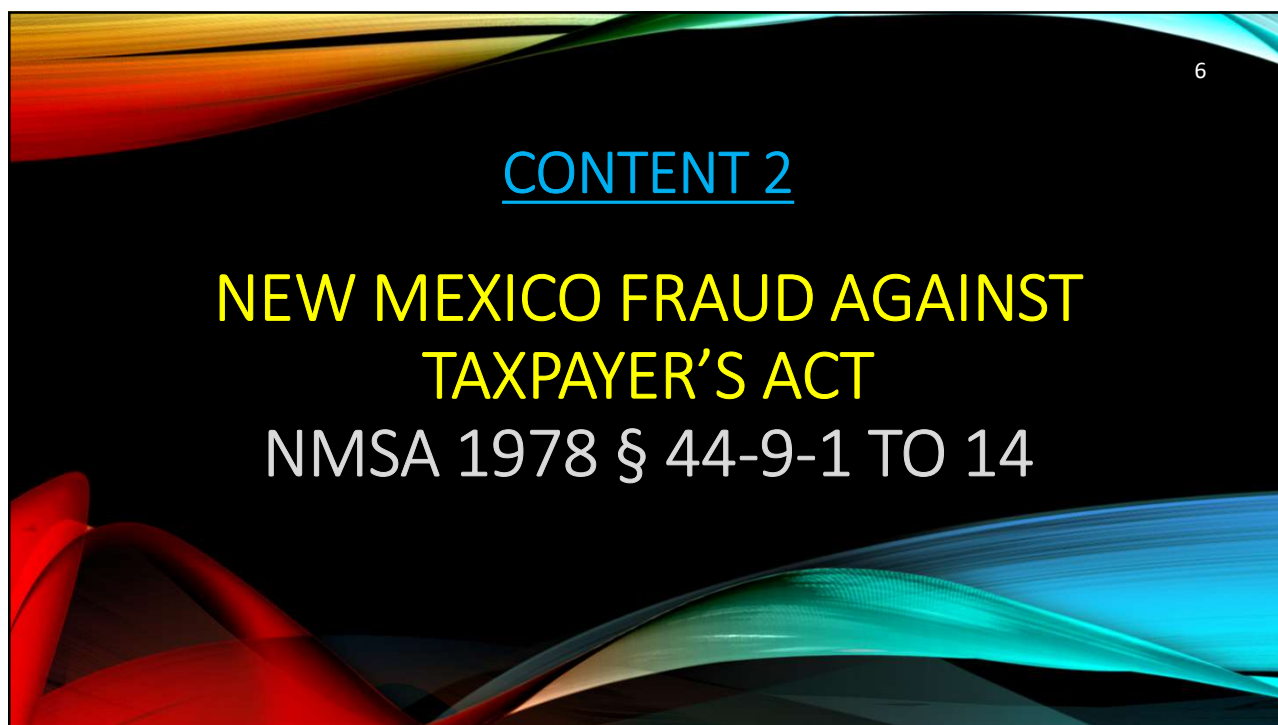
**Who is here today?**

- A. Board of Education Member**
- B. Superintendent**
- C. Other Administration**
- D. CPA Firm**
- E. Other**

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## TRAINING OBJECTIVE

1. *Protect your District or Charter from these Risks.*
2. *Know the Risks to Elected Officials' office – Paths to Removal*
3. *Share this Knowledge of Remedies with others who are fighting corruption or wrongdoing.*

*Ethical decision making process becomes key – I also provide trainings on a specific process and tools in a workshop: [Audrey@JAG.CPA](mailto:Audrey@JAG.CPA)*


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## Quo Warranto

**noun**

1. In law, a writ calling upon a person or body of persons to show **by what warrant** they exercise a public office, privilege, franchise, or liberty. It is the **remedy for usurpation of office** or of corporate franchises, etc.
2. A **writ** brought before a proper tribunal, to inquire **by what warrant** a person or a corporation acts or exercises certain powers.
3. A hearing to determine **by what authority** someone has an office or franchise or liberty.



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## Quo Warranto<sup>9</sup>

- When the attorney general or district attorney refuses to act, or when the office usurped pertains to *a county, incorporated village, town or city, or school district*, such action may be brought in the name of the state by a private person on his own complaint.



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## Quo Warranto

### EXAMPLE:

*State ex rel.  
Martinez v. Padilla,*

**1980-NMSC-064, 94  
N.M. 431, 612 P .2d  
223 (S. Ct. 1980)**

District: West Las Vegas School District

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Plaintiffs-Appellees: State of New Mexico, ex rel. Donaldo A. Martinez, et al.

Defendants-Appellants: Filiberto Padilla and Pete Garcia

Martinez challenged Padilla, Garcia, Leger, and Roybal title to office on the Board of Education. Complaint as to Ray Leger was dismissed, and the Court ruled in favor of Rudolfo Roybal.

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## Quo Warranto

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**1980-NMSC-064, 94  
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The Plaintiffs alleged that defendants Garcia<sup>11</sup> and Padilla forfeited and became ineligible to hold public office because they had **profited from or caused the misuse of public monies**, contrary to N.M. Const. Art. VIII, § 4 and Section 22-8-42(B), N.M.S.A. 1978.

The acts found to have occurred were essentially these:

1. Arabella Padilla (wife) round-trip fare ABQ – SF.\*
2. Purchase of gasoline from Garcia.\*
3. Arabella was paid by the District for substitute teaching when did not.
4. Padilla was paid by Luna Vocational Technical Institute for services not rendered.

\* = These items were not appropriated for that purpose

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## Quo Warranto

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The Defendants argued the Court had no jurisdiction since the NM Constitution Art. VII,<sup>12</sup> Section 2 states that all qualified electors are qualified to hold public office except as otherwise provided in the constitution.

The Constitution then “otherwise provides” by:

- disqualifying felons (Art. VII, Section 1), by
- providing for the recall of school board members (Art. XII, Section 14), and by
- Art. VIII, Section 4 **(Next Slide)**.

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**Quo Warranto****EXAMPLE:*****State ex rel.  
Martinez v. Padilla,******1980-NMSC-064, 94  
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Art. VIII, Section 4 states:

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Any public officer making any profit out of public moneys or using the same for any purpose not authorized by law, shall be deemed guilty of a felony and shall be punished as provided by law and shall be disqualified to hold public office.

The Defendants argued only a felony or recall election could remove them. The Court disagreed.

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**Quo Warranto****EXAMPLE:*****State ex rel.  
Martinez v. Padilla,******1980-NMSC-064, 94  
N.M. 431, 612 P .2d  
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Art. VIII, Section 4 per Court:

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Does NOT require that a public officer be convicted of a felony BEFORE he can be disqualified, but merely requires a judicial finding that the officer has knowingly misused public funds.

See also *State v. Bohannan*, 101 Ariz. 520, 421 P .2d 877 (1966); *State v. Wymore*, 343 Mo. 98, 119 S.W.2d 941 (1938); *Commonwealth v. Allen*, 70 Pa. 465 (1872).

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Quo WarrantoEXAMPLE:

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Art. VIII, Section 4 is consistent with: <sup>15</sup>

NMSA 1978 Section 22-8-42(D) of the Public School Finance Act which states:

A person who has misused public funds “shall in addition to all other civil or criminal penalties, forfeit his office or employment”.

This section makes it clear that a person who violates a provision of the Public School Finance Act, Sections 22-8-1 to 42, N.M.S.A. 1978, is subject to civil penalties, criminal penalties and disqualification from office, and that disqualification is not dependent on the prior imposition of a criminal penalty.

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Quo WarrantoEXAMPLE:

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Defendants also argued Recall is the exclusive means by which an officer can be removed by **misfeasance** or **malfeasance** <sup>16</sup>

The Court disagreed.

An action in quo warranto is a proper method of “correcting the usurpation, misuser, or nonuser, of a public office or corporate franchise.

Where the acts of the officer area forfeiture of the office, quo warranto IS A PROPER REMEMDY.

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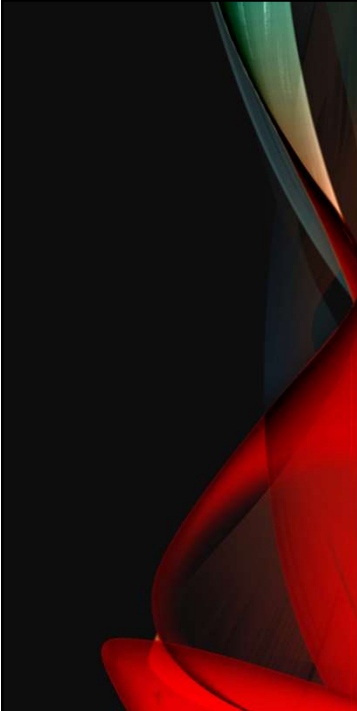


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**Misfeasance**  
Performing a legal act in an improper or illegal manner and the conduct evinces an improper or corrupt motive

When a public officer has a right to perform an act which is discretionary, the manner in which the discretion is exercised does not rise to the level of misfeasance unless the discretion is exercised with an improper or corrupt motive.

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**Malfeasance**  
Any wrongful conduct affecting performance of official duties, or as a wrongful act which the actor had no legal right to do, or any wrongful conduct which affects, interrupts or interferes with performance of official duties, or an act for which there is no authority or warrant of law or which a person ought not to do at all, or the unjust performance of some act, which party performing it has not right, or doing an act which is wholly wrongful and unlawful and which an officer has no authority to do, and if the act is discretionary it must have been done with an improper or corrupt motive.

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## Quo Warranto

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Defendants also argued that DFA should be bringing the action alleging misuse of funds under Section 22-8-42(E) which states:

Legal proceedings for violation of the Public School Finance Act shall be instituted by the secretary of finance and administration.

The Court disagreed.  
Section 44-3-4(C) allows a private person to bring forth this action (slide above).

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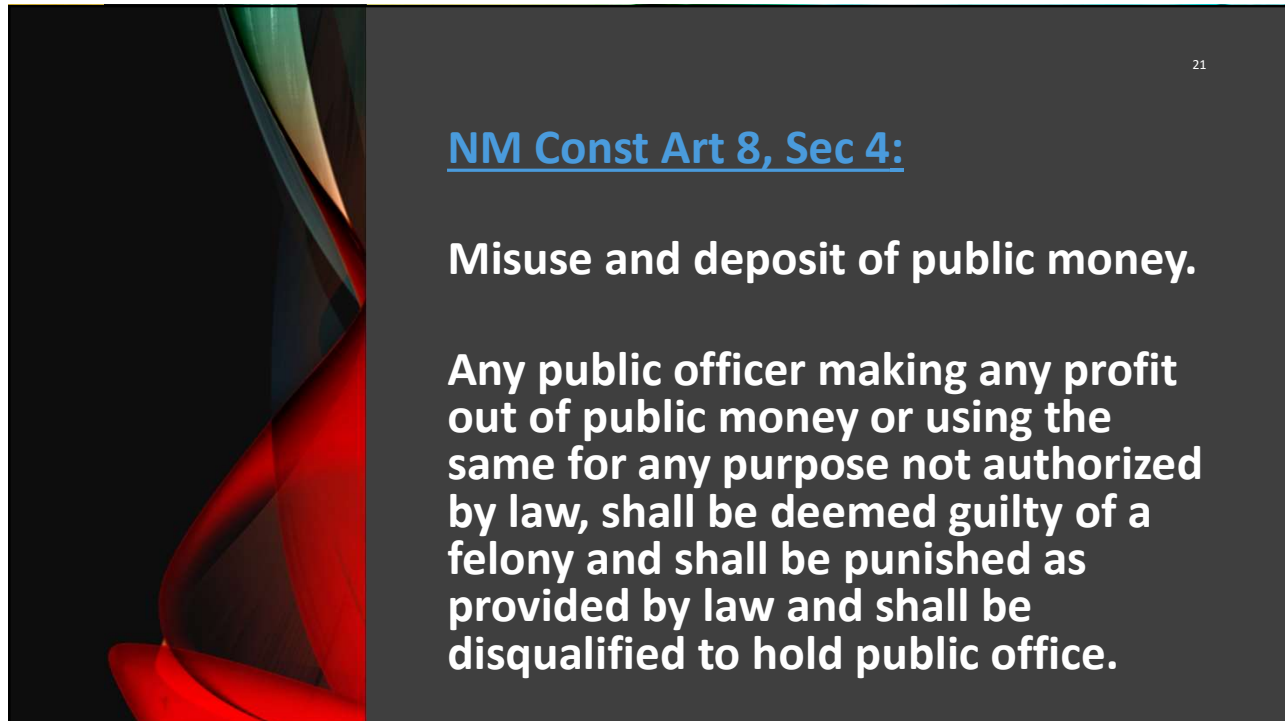
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## QUESTIONS:

**IF elected officials are removed under Quo Warranto:**

- Can they run for public office?
- Does re-election make them qualified?
- How long are they “disqualified” for “forfeiting” their office?

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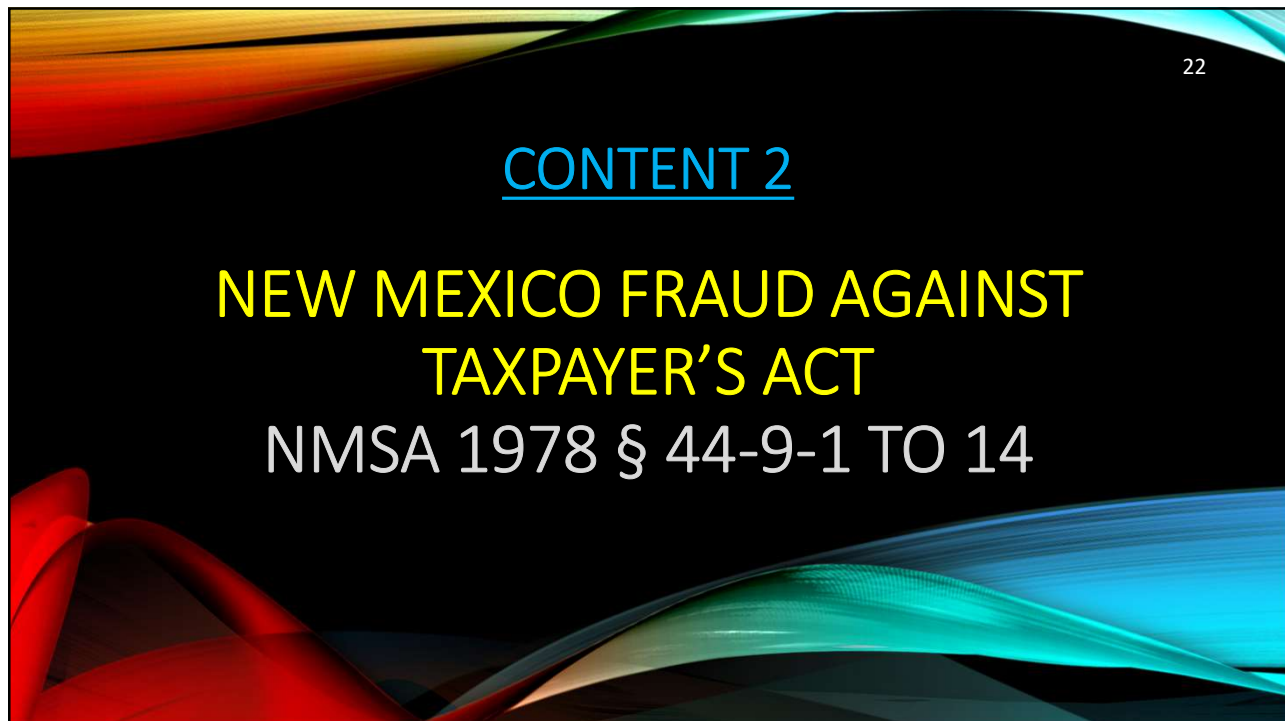
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NM Const Art 8, Sec 4:

**Misuse and deposit of public money.**

**Any public officer making any profit out of public money or using the same for any purpose not authorized by law, shall be deemed guilty of a felony and shall be punished as provided by law and shall be disqualified to hold public office.**

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CONTENT 2

**NEW MEXICO FRAUD AGAINST  
TAXPAYER'S ACT**

**NMSA 1978 § 44-9-1 TO 14**

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**Fraud Against Taxpayers Act: §§ 44-9-1 to -14** - Empowers citizens or the Attorney General to file **qui tam action** for damages and restitution against anyone filing false claims with the state. Protects whistleblowers, both from within and outside state government, from retaliation.

#### **LOCAL GOVERNMENT EXAMPLE**

**Whistleblower Protection Act: §§ 10-16C-1 to -6** - Protects public employees who disclose improper conduct by state or local government agencies against retaliation.

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## **Fraud Against Taxpayers Act**

### **Definitions**

#### **44-9-2. Definitions.**

As used in the Fraud Against Taxpayers Act [44-9-1 NMSA 1978]:

A. "**claim**" means a request or demand for money, property or services when all or a portion of the money, property or services requested or demanded issues from or is provided or reimbursed by the state;

B. "**employer**" includes an individual, corporation, firm, association, business, partnership, organization, trust and the state and any of its agencies, institutions or political subdivisions;

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## Fraud Against Taxpayers Act

### Definitions

#### 44-9-2. Definitions.

As used in the Fraud Against Taxpayers Act [44-9-1 NMSA 1978]:

C. "**knowingly**" means that a person, with respect to information, acts:

- (1) with actual knowledge of the truth or falsity of the information;
- (2) in deliberate ignorance of the truth or falsity of the information; or
- (3) in reckless disregard of the truth or falsity of the information;

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## Fraud Against Taxpayers Act

### Definitions

#### 44-9-2. Definitions.

D. "**person**" means an individual, corporation, firm, association, organization, trust, business, partnership, limited liability company, joint venture or any legal or commercial entity; and

E. "**state**" means the state of New Mexico or any of its branches, agencies, departments, boards, commissions, officers, institutions or instrumentalities, including the New Mexico finance authority, the New Mexico mortgage finance authority and the New Mexico lottery authority.

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**44-9-3. False claims; liability; penalties; exception.**

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A. A person shall not:

- (1) knowingly present, or cause to be presented, to an employee, officer or agent of the state or to a contractor, grantee or other recipient of state funds a false or fraudulent claim for payment or approval;
- (2) knowingly make or use, or cause to be made or used, a false, misleading or fraudulent record or statement to obtain or support the approval of or the payment on a false or fraudulent claim;
- (3) conspire to defraud the state by obtaining approval or payment on a false or fraudulent claim;

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**44-9-3. False claims; liability; penalties; exception.**

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A. A person shall not:

- (4) conspire to make, use or cause to be made or used, a false, misleading or fraudulent record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state;
- (5) when in possession, custody or control of property or money used or to be used by the state, knowingly deliver or cause to be delivered less property or money than the amount indicated on a certificate or receipt;
- (6) when authorized to make or deliver a document certifying receipt of property used or to be used by the state, knowingly make or deliver a receipt that falsely represents a material characteristic of the property;

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#### 44-9-3. False claims; liability; penalties; exception.

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A. A person shall not:

(7) knowingly buy, or receive as a pledge of an obligation or debt, public property from any person that may not lawfully sell or pledge the property;

(8) knowingly make or use, or cause to be made or used, a false, misleading or fraudulent record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state; or

(9) as a beneficiary of an inadvertent submission of a false claim and having subsequently discovered the falsity of the claim, fail to disclose the false claim to the state within a reasonable time after discovery.

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#### 44-9-3. False claims; liability; penalties; exception.

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B. **Proof of specific intent to defraud is not required** for a violation of Subsection A of this section.

C. A person who violates Subsection A of this section shall be liable for:

(1) **three times the amount of damages sustained by the state because of the violation;**

(2) a civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000) for each violation;

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**44-9-3. False claims; liability; penalties; exception.**

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(3) the costs of a civil action brought to recover damages or penalties; and

(4) reasonable attorney fees, including the fees of the attorney general or state agency counsel.

D. A court may assess not less than two times the amount of damages sustained by the state if the court finds all of the following:  
(1) the person committing the violation furnished the attorney general with all information known to that person about the violation within thirty days after the date on which the person first obtained the information;

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**44-9-3. False claims; liability; penalties; exception.**

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(2) at the time that the person furnished the attorney general with information about the violation, a criminal prosecution, civil action or administrative action had not been commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation; and

(3) the person fully cooperated with any investigation by the attorney general.

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#### **44-9-4. Investigation by the attorney general; delegation; civil<sup>3</sup> action.**

A. The attorney general shall diligently investigate suspected violations of Section 3 of the Fraud Against Taxpayers Act [44-9-3 NMSA 1978], and if the attorney general finds that a person has violated or is violating that section, the attorney general may bring a civil action against that person pursuant to the Fraud Against Taxpayers Act [44-9-1 NMSA 1978].

B. The attorney general may in appropriate cases delegate the authority to investigate or to bring a civil action to the state agency to which a false claim was made, and when this occurs, the state agency shall have every power conferred upon the attorney general pursuant to the Fraud Against Taxpayers Act.

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#### **44-9-5. Civil action by qui tam plaintiff; state may intervene.**

A. A person may bring a civil action for a violation of Section 3 of the Fraud Against Taxpayers Act [44-9-3 NMSA 1978] on behalf of the person and the state. The action shall be brought in the name of the state. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public purposes behind the Fraud Against Taxpayers Act [44-9-1 NMSA 1978].

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#### 44-9-7. Awards to qui tam plaintiff and the state.

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A. Except as otherwise provided in this section, if the state proceeds with an action brought by a qui tam plaintiff and the state prevails in the action, the qui tam plaintiff shall receive:

(1) at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action; or

(2) no more than ten percent of the proceeds of the action or settlement if the court finds that the action was based primarily on disclosures of specific information, not provided by the qui tam plaintiff, relating to allegations or transactions in a criminal, civil, administrative or legislative hearing, proceeding, report, audit or investigation or from the news media, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation.

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#### 44-9-8. Award of attorney fees and costs to defendant.

If the state does not proceed with the action and the qui tam plaintiff conducts the action, the court may award a defendant reasonable attorney fees and costs if the defendant prevails and the court finds the action clearly frivolous, clearly vexatious or brought primarily for the purpose of harassment.

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#### **44-9-11. Employer interference with employee disclosure; private action for retaliation.**

A. An employer shall not make, adopt or enforce a rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a fraud against taxpayers action, including investigating, initiating, testifying or assisting in an action filed or to be filed pursuant to the Fraud Against Taxpayers Act [44-9-1 NMSA 1978].

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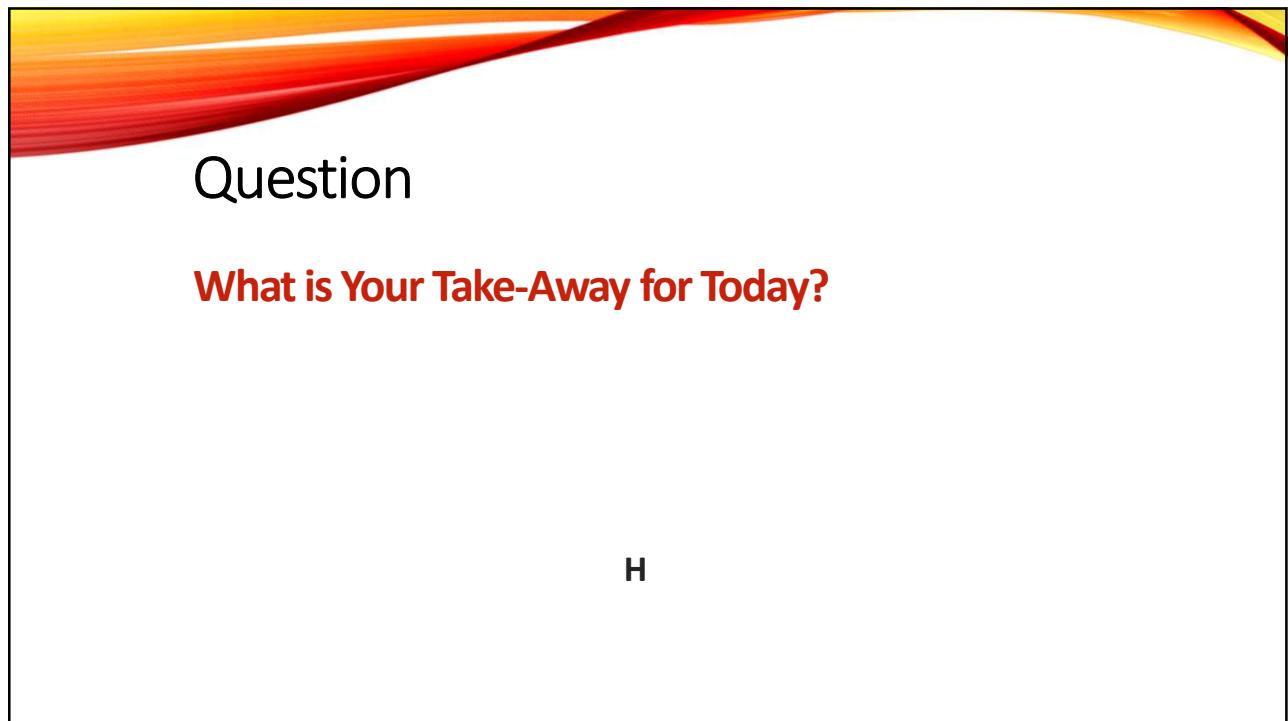
#### **44-9-14. Remedy not exclusive.**

The remedies provided for in the Fraud Against Taxpayers Act [44-9-1 NMSA 1978] are not exclusive and shall be in addition to any other remedies provided for in any other law or available under common law.

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## Disclaimer

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# *Thank you*



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