

Hawaii Statutes - Chapter 414D: HAWAII NONPROFIT CORPORATIONS ACT

Part I: GENERAL PROVISIONS

414D-1: Short title. This chapter shall be known and may be cited as the "Hawaii Nonprofit Corporations Act".

414D-3: Filing requirements.

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the department director.

(b) This chapter must require or permit filing of the document with the department director.

(c) The document must contain the information required by this chapter. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of good standing required of foreign corporations need not be in English if accompanied by an English translation under oath of the translator.

(f) The document must be certified and executed:

(1) By the presiding officer of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing a document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the person signs. The document may but need not contain:

(1) The corporate seal;

(2) An attestation by the secretary or an assistant secretary; or

(3) An acknowledgment, verification, or proof.

(h) If the department director has prescribed a mandatory form for a document under section 414D-4, the document must be in or on the prescribed form.

(i) The document shall be delivered to the office of the department director for filing and shall be accompanied by the correct filing fee and any penalty payment required under this chapter.

414D-16: Private foundations. Except as otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the Code:

(1) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the Code;

- (2) Shall not engage in any act of self-dealing as defined in section 4941(d) of the Code;
- (3) Shall not retain any excess business holdings as defined in section 4943(c) of the Code;
- (4) Shall not make any investments in such manner as to subject the corporation to tax under section 4944 of the Code;
- (5) Shall not make any taxable expenditures as defined in section 4945(d) of the Code.

414D-19: Shares of stock and dividends prohibited; compensation; distribution. A corporation under this chapter shall not authorize or issue shares of stock except for limited-equity housing cooperatives. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter; provided that no such payment, benefit, or distribution shall be deemed to be a dividend or a distribution of income or profit.

Part II: ORGANIZATION

414D-31: Incorporators. One or more individuals may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the department director for filing.

414D-32: Articles of incorporation. (a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 414D-61;
 - (2) The mailing address of the corporation's initial principal office, the street address of the corporation's initial registered office, and the name of its initial registered agent at its initial registered office;
 - (3) The name and address of each incorporator;
 - (4) Whether or not the corporation will have members; and
 - (5) Provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (b) The articles of incorporation may set forth:
- (1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
 - (2) The names and addresses of the individuals who are to serve as the initial directors;
 - (3) Provisions not inconsistent with law regarding:
 - (A) Managing and regulating the affairs of the corporation;
 - (B) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members), including but not limited to the power to merge with another corporation, convert to another type of entity, sell all or substantially all of the corporation's assets, or dissolve the corporation; and
 - (C) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;

- (4) Any provision that under this chapter is required or permitted to be set forth in the bylaws;
- (5) Provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of the director's duties to the corporation and its members; provided that such a provision may not eliminate or limit the liability of a director:
 - (A) For any breach of the director's duty of loyalty to the corporation or its members;
 - (B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
 - (C) For any transaction from which a director derived an improper personal economic benefit; or
 - (D) Under sections 414D-150 to 414D-152.
- (c) None of the provisions specified in this section shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.
- (d) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

414D-33: Incorporation.

- (a) A corporation's existence begins when the articles of incorporation are filed with the department director.
- (b) The department director's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the State to cancel or revoke the incorporation or involuntarily dissolve the corporation.

414D-35: Organization of corporation.

- (a) After incorporation:
 - (1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
 - (2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to elect:
 - (A) Directors and complete the organization of the corporation; or
 - (B) A board of directors who shall complete the organization of the corporation.
 - (b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.
 - (c) An organizational meeting may be held in or out of the State in accordance with section 414D-143.

Part XII: DISTRIBUTIONS

414D-231: Prohibited distributions.

Except as authorized by section 414D-232, a corporation shall not make any distributions.

414D-232: Authorized distributions.

(a) A corporation may purchase its memberships if, after the purchase is completed:

- (1) The corporation would be able to pay its debts as they become due in the usual course of its activities; and
 - (2) The corporation's total assets would at least equal the sum of its total liabilities.
- (b) Corporations may make distributions upon dissolution in conformity with part XIII.

Part XIV: FOREIGN CORPORATIONS

414D-273: Application for certificate of authority.

(a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the department director for filing. The application shall set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of section 414D-276;
 - (2) The name of the state or country under whose law it is incorporated;
 - (3) The date of incorporation;
 - (4) The mailing address of the corporation's principal office, the street address of its registered office in this State, and the name of its registered agent at its registered office in this State;
 - (5) The names and usual business addresses of its current directors and officers; and
 - (6) Whether the foreign corporation has members.
- (b) The foreign corporation shall deliver with the completed application a certificate of good standing or other similar record duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.

Part XV: RECORDS AND REPORTS

414D-301: Corporate records.

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by section 414D-148(d).

- (b) A corporation shall maintain appropriate accounting records.
- (c) A corporation or its agent shall maintain a record of its members in a form that

permits preparation of a list of the name and address of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Articles or restated articles of incorporation and all amendments to them currently in effect;

(2) Bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(4) Minutes of all meetings of members and records of all actions approved by the members for the past three years;

(5) All written financial statements furnished for the past three years under section 414D-306;

(6) A list of the names and business or home addresses of its current directors and officers; and

(7) The most recent annual report delivered to the department director under section 414D-308.

414D-304: Court-ordered inspection.

(a) If a corporation does not allow a member who complies with section 414D-302(a) to inspect and copy any records required by that section to be available for inspection, the court in the county where the corporation's principal office (or, if none in this State, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with section 414D-302(b) and (c) may apply to the court in the county where the corporation's principal office (or, if none in this State, its registered office) is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(c) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis to doubt the right of the member to inspect the records demanded.

(d) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

414D-305: Limitations on use of membership list.

Without consent of the board, a membership list or any part thereof shall not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board, a membership list or any part thereof shall not be:

- (1) Used to solicit money or property unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
- (2) Used for any commercial purpose;
- (3) Sold to or purchased by any person; or
- (4) Published in whole or in part to the general public.