



# The National Agricultural Law Center

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Agricultural Cooperative Formation:

*Hawaii*



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# A National Agricultural Law Center Research Publication

## Agricultural Cooperative Formation: Hawaii

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## [Haw. Rev. Stat. §§ 421-1 to 421-25](#)

### Section 421-2 – Purposes

An association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

(1) Producing, assembling, marketing, buying or selling agricultural products or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, shipping, or utilizing the products, or manufacturing or marketing the byproducts, thereof; provided seventy-five per cent of such agricultural products shall be of Hawaiian origin;

(2) Manufacturing, buying for or supplying to its members machinery, equipment, feed, fertilizer, fuel, seeds, and other agricultural supplies;

(3) Performing or furnishing business or educational services, on a cooperative basis, or to its members;

(4) Financing any of the above enumerated activities for its members.

### Section 421-9 – Powers

(a) An association formed under this chapter, or an association which might be formed under this chapter and which existed at the time this chapter took effect, shall have the capacity to act possessed by natural persons, but the association shall have the authority to perform only such acts as are necessary or proper to accomplish the purposes as set forth in its articles and which are not repugnant to law.

(b) Without limiting or enlarging the grant of authority contained in subsection (a), every association shall have authority:



(1) To act as agent, broker, or attorney in fact for its members, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles, and to hold title for its members and for subsidiary and affiliated associations to property handled or managed by the association on their behalf.

(2) To make contracts, and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable, or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles, and that may be conducive to or expedient for the interest or benefit of the association.

(3) To make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase or otherwise acquire, endorse, discount, or sell any evidence of debt, obligation, or security, but it shall not engage in banking.

(4) To establish and accumulate reserves to capital.

(5) To own and hold membership in or shares of the capital stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehousing, or marketing any of the products handled by the association; or, in financing its activities, and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon.

(6) To acquire, hold, sell, dispose of, pledge, or mortgage, any property which its purposes may require, subject to any limitation prescribed by law or its articles.

(7) To borrow money and to give its notes, bonds, or other obligations therefor and secure the payment thereof by mortgage or pledge.

(8) To deal in agricultural products and handle agricultural machinery, equipment, and supplies, and perform services for nonmembers to an amount not greater in annual value than such as are dealt in, handled, or performed for or on behalf of its members.

(9) To have a corporate seal and to alter it at pleasure.

(10) To continue as a corporation for the time limit in its articles, which may be perpetual.

(11) To sue and be sued in its corporate name.

(12) To conduct business in this State and elsewhere as may be permitted by law.



(13) To dissolve and wind up its affairs.

(14) To charge differential rates on the sale of its goods and services to members and nonmembers as provided for in its bylaws.

### Section 421-4 – Articles of Incorporation

(a) Articles of incorporation shall be certified and executed by each of the incorporators, if natural persons, and by the president and secretary of the association and shall contain the following:

(1) The name of the association;

(2) The mailing address of the association's principal office, the street address of the association's initial registered office, and the name of its initial registered agent at its initial registered office;

(3) The purposes and powers of the association;

(4) The proposed duration of the association;

(5) The names and addresses of persons who are to act as the initial directors and officers of the association;

(6) The names and addresses of the incorporators, and if organized with capital stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribed;

(7) Whether organized with or without capital stock, and if organized with capital stock the total authorized number of shares and the par value of each share, if any; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the dividends to which each class shall be entitled; and

(8) If organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the rule by which the rights and interests shall be determined.

(b) The articles may also contain any other provisions consistent with law for regulating the association's business or the conduct of its affairs, the establishment of voting districts, the election of delegates to represent the districts and the members residing therein, for voting by proxy, and the issuance, retirement, and transfer of membership and stock.



## Section 421-8 – Bylaws

The members of the association, within thirty days after its incorporation, shall adopt bylaws not inconsistent with law or the articles, and they may alter and amend the same from time to time. The bylaws must be adopted by a majority of the members voting thereon, or if the association permits its members to vote on the basis of patronage, then by a majority of members and majority of the patronage, voting thereon. The bylaws may also provide for:

- (1) The time, place, and manner of calling and conducting meetings of the members, and the number of members that shall constitute a quorum;
- (2) The manner of voting and the condition upon which members may vote at general and special meetings and by mail or by delegates elected by district groups or other associations, and the voting power of voters based on patronage;
- (3) Subject to any provision thereon in the articles and in this chapter, the number, qualifications, compensation, duties, and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;
- (4) The time, place, and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum;
- (5) Rules consistent with law and the articles for the management of the association, the establishment of voting districts, the making of contracts, the issuance, retirement, and transfer of stock, and the relative rights, interests, and preferences of members and shareholders;
- (6) Penalties for violation of the bylaws.

## Section 421-13 – Directors

(a) The business of the association shall be managed by a board of not less than three directors; at least two-thirds of the directors shall be members of the association or officers, directors, or members of a member association. A director shall hold office for the term for which the director was named or elected and until the director's successor is elected and qualified.

(b) The names of the first directors shall be stated in the articles. Their successors shall be elected by the members at the first meeting of the members held after the incorporation of the association.

(c) The number, qualifications, terms of office, manner of election, time and place of meeting, and the powers and duties of the directors may, subject to this chapter, be prescribed by the articles or bylaws. Except as otherwise prescribed in the articles or bylaws:



(1) A director shall be elected for a term of one year.

(2) Vacancies in the board, other than by expiration of term, shall be filled by the remaining members of the board, unless the bylaws provide for the election of directors by districts, in which case the board shall call a special meeting of the members in the district to elect a person qualified to fill the vacancy. A director elected by the remaining members of the board shall serve until the director's successor is elected by the members, who may make the election at the next annual meeting of the members or at any special meeting called and held prior thereto.

(d) The bylaws may provide, if not restricted by the articles, that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to the districts, either directly or by district delegates elected by the members in that district. In such case, the bylaws shall specify, or vest in the board authority to determine, the number of directors to be elected by each district and the manner and method of apportioning the directors and of districting and redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to nominate the directors apportioned thereto and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered as a final election.

(e) The bylaws may provide for an executive committee to be elected by the board from their number and may allot to such committee all the functions and powers of the board subject to its general direction and control.

### Section 421-15 – Officers

The board shall elect a president, a secretary, and a treasurer, and may elect one or more vice presidents, and such other officers as may be authorized in the bylaws. The president and at least one of the vice presidents must be members and directors, but a vice president who is not a director cannot succeed to or fill the office of president. Any two of the offices of vice president, secretary, and treasurer may be combined in one person.

### Section 421-10 – Members

(a) An association may admit as members only bona fide producers of agricultural products, including tenants and landlords receiving a share of the crop, and cooperative associations of the producers. The incorporators named in the articles are thereby made members of the association, and they shall pay for their membership or stock the same amount and in the same manner as may be required in the case of other members.



- (b) The articles may limit the amount of common stock which a member may own.
- (c) Under the terms and conditions prescribed in the bylaws, a member shall lose the member's membership if the member ceases to belong to the class eligible to membership under this section, but the member shall remain subject to any liability incurred by the member while a member of the association.
- (d) No member shall be personally liable for any debt or liability of the association.
- (e) Unless the articles otherwise provide, no member shall have more than one vote.

### **Section 421-11 – Membership or Stock Certificates, Transfers, Dividends, Preferred Stock**

- (a) No certificate for membership or stock shall be issued until fully paid for, but bylaws may provide that a member may vote and hold office prior to payment in full for the member's membership or stock.
- (b) Dividends in excess of eight per cent on the actual cash value of the consideration received by the association shall not be paid on common or preferred stock or membership capital, but dividends may be cumulative.
- (c) Net margins in excess of dividends and additions to reserves and excess shall be distributed on the basis of patronage, and if the bylaws so provide, distribution of such net margins may be restricted to members or may be made at the same or different rate for members and nonmembers. The books of the association shall show the interest of members and nonmembers in the reserves and excess. The bylaws may provide that any distribution to a nonmember, eligible for membership, may be credited to the nonmember until the amount thereof equals the value of a membership certificate or a share of the association's common stock. The distribution credited to the account of a nonmember may be transferred to the reserve fund at the option of the board if, after two years, the amount is less than the value of the membership certificate or a share of common stock.
- (d) The bylaws may fix a time within which a member shall receive from the association, after the member has notified the association of the member's withdrawal, or after the adoption of a resolution by the board terminating the member's membership, the value in money of the member's membership interest in the association as appraised by the board of directors. If the board of directors approves the member's designation of a transferee of the member's membership interest, the association shall be under no obligation to pay the member the value of the member's interest.
- (e) An association may issue preferred stock to members and nonmembers. Preferred stock may be redeemed or retired by the association on such terms and conditions as may be provided in the articles and printed on the



stock certificate. Preferred stockholders shall not be entitled to vote, but no change in their priority or preference rights shall be effective until the written consent of the holders of two-thirds of the preferred stock has been obtained. Payment for preferred stock may be made in cash, services, or property on the basis of the fair value of the stock, services, and property as determined by the board.

### **Section 421-23 – Taxation**

To obtain the exemptions from taxation granted by this section or any other law, the association annually shall file with the director of taxation a copy of its report made under section 421-22, and in addition thereto, within ninety days after the close of its fiscal year, shall file with the tax assessor of each district in which there are persons doing business to whom it has paid, during the preceding fiscal year, any proceeds of goods marketed, a report showing the name of each person to whom the proceeds were paid, the total proceeds of sales for which such person is taxable under chapter 237 for the fiscal year, and the rate or rates of such tax applicable thereto or to the several amounts thereof, as the case may be.

