

Motooka Rosenberg Lau & Oyama

2020 UPDATE
HRS CHAPTER 421I
COOPERATIVE HOUSING CORPORATIONS



Motooka Rosenberg Lau & Oyama, LLC
1000 Bishop Street, Suite 801
Honolulu, Hawaii 96813
Telephone: (808) 532-7900
Facsimile: (808) 532-7911
www.myhawaiiaw.com

CHAPTER 421I
COOPERATIVE HOUSING CORPORATIONS

421I-1	Cooperative housing corporation; defined	1
421I-2	Amendment of bylaws.....	1
421I-3	Board of directors; election	1
421I-4	Proxies.....	1
421I-5	Meetings of the board of directors	2
421I-6	Documents of the corporation	2
421I-7	Shareholder list.....	3
421I-8	Notification of assessment increases	3
421I-9	Mediation and arbitration of disputes.....	3
421I-10	Applicability of other laws	3
421I-11	Application of Hawaii business corporation act.....	4
421I-12	Employees of cooperative housing corporations; background checks	4
421I-13	Service of process	4

§421I-1 Cooperative housing corporation; defined. As used in this chapter, unless otherwise indicated by the context, "corporation" means a cooperative housing corporation that:

- (1) Has one and only one class of stock outstanding;
- (2) Allows each tenant shareholder to occupy a dwelling unit for dwelling purposes solely by reason of the tenant shareholder's ownership of stock in the corporation;
- (3) Does not allow a shareholder to receive, either conditionally or unconditionally, any distributions from the corporation except when there is a complete or partial liquidation of the corporation; provided that this paragraph does not apply to earnings and profits of the corporation; and
- (4) Has eighty per cent or more of the gross income for the taxable year in which taxes are paid or incurred pursuant to 26 United States Code section 216(A) derived from tenant shareholders.

§ 421I-2 Amendment of bylaws. The bylaws of a corporation may be amended only upon receiving the affirmative vote or written consent of at least two-thirds of the shareholders.

§421I-3 Board of directors; election.

(a) A meeting of the corporation for the purpose of electing the board of directors shall be held not later than one hundred eighty days after the first conveyance of a dwelling unit to a shareholder, if at least forty per cent of the dwelling units have been conveyed by that time. If forty per cent of the dwelling units have not been conveyed within one year after the first conveyance, the meeting of the corporation may be held upon the call of the owners of at least ten per cent of the shares by a petition presented to the secretary of the corporation.

- (b) Every member of the board of directors shall be:
 - (1) A shareholder of the corporation;
 - (2) A spouse of a shareholder; or
 - (3) A trust beneficiary, if the shareholder is a trustee.
- (c) Each dwelling unit shall have only one representative on the board of directors.

§ 421I-4 Proxies.

(a) A proxy shall be valid only for a specific meeting and any of that meeting's adjournments.

(b) A shareholder may designate any person or the board of directors as a proxy, and the proxy may be limited as indicated by the shareholder. No proxy shall be irrevocable unless:

- (1) The proxy is coupled with a financial interest in the dwelling unit; or
 - (2) The proxy is held pursuant to a first mortgage of record encumbering a dwelling unit or an agreement of sale affecting a dwelling unit.
- (c) A proxy statement shall contain at least the following information:
- (1) The name of the corporation;
 - (2) The date of the meeting to which the proxy is applicable;
 - (3) The printed name and the signature of the shareholder giving the proxy; and
 - (4) The dwelling unit or units for which the proxy is given.

§ 421I-5 Meetings of the board of directors.

(a) All meetings of the board of directors, other than executive sessions, shall be open to all shareholders, and the shareholders may participate in any deliberation or discussion unless a majority of a quorum of the board of directors votes otherwise. The board of directors may adopt reasonable restrictions on shareholder participation.

(b) The board of directors shall meet at least once each year. Whenever practicable, notice of all board meetings shall be posted in prominent locations within the project by the resident manager, managing agent, member of the board of directors, or other person designated by the board of directors, at least seventy-two hours prior to the meeting or simultaneously when notice is given to members of the board of directors.

(c) Minutes of the meetings of the board of directors shall include the recorded vote of each board member on all motions except motions voted upon in executive session.

(d) The board of directors, with the approval of a majority of a quorum of its members, may adjourn any meeting and reconvene in executive session to discuss and vote upon matters concerning personnel or litigation in which the corporation is or may become involved, if the general nature of any business to be considered in executive session is first announced in the session open to all shareholders.

(e) No board member shall cast that board member's vote by proxy.

(f) A board member shall not be allowed to vote at any board meeting where the board member has a conflict of interest. The board member shall disclose the conflict of interest, in its general nature, prior to the vote on that matter. The minutes of the meeting shall record the substance of the disclosure of the conflict of interest.

§ 421I-6 Documents of the corporation.

(a) Upon approval by the board of directors of the corporation's most current financial statement and the minutes of the most recent board of directors' meeting, the statement and the minutes shall be available for examination by any shareholder at no cost or on twenty-four hour loan, at convenient hours and a convenient location designated by the board of directors.

(b) Upon approval by the board of directors of the minutes of other meetings of the board of directors and the meetings of the corporation for the current and prior year, the minutes shall be available for examination by shareholders at convenient hours and a convenient location designated by the board. Copies of meeting minutes shall be provided to any shareholder upon the shareholder's request, if the shareholder pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(c) Financial statements, general ledgers, accounts receivable ledgers, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the corporation for the current and prior year, and any documents regarding delinquencies of ninety days or more shall be available for examination by shareholders at no cost and at convenient hours at a place designated by the board; provided that shareholders shall pay for administrative costs associated with examinations in excess of eight hours per year.

The board may require shareholders to furnish the corporation with an affidavit stating that the information is requested in good faith for the protection of the interests of the corporation, its shareholders or both.

Copies of these items shall be provided to any shareholder upon the shareholder's request, if the shareholder pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(d) Shareholders may view proxies, tally sheets, ballots, shareholders' check-in lists, and the certificate of election for a period of thirty days following any corporation meeting; provided that shareholders shall pay for administrative costs in excess of eight hours per year.

The board may require shareholders to furnish to the corporation an affidavit stating that the information is requested in good faith for the protection of the interest of the corporation, its shareholders, or both.

Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, shareholders' check-in lists, and the certificates of election from the most recent corporation meeting shall be provided to any shareholder upon the shareholder's request, if the shareholder pays a reasonable fee for duplicating, postage, stationery, and other administrative costs associated with handling the request.

(e) Shareholders may file a written request with the board of directors to examine other documents. The board shall give written authorization or written refusal with an explanation of the refusal within thirty calendar days of receipt of the request.

§ 421I-7 Shareholder list. The resident manager or managing agent or board of directors shall keep an accurate and current list of shareholders of the corporation and their current addresses, including the names and addresses of the vendees under an agreement of sale, if any. The list shall be maintained at a place designated by the board of directors and a copy shall be available, at cost, to any shareholder who furnishes to the resident manager, managing agent, or board of directors an affidavit stating that the list shall be used solely by the shareholder personally and solely for the purpose of soliciting votes or proxies or providing information to other shareholders with respect to corporation matters, and shall not be furnished to anyone for use for any other purpose.

§ 421I-8 Notification of assessment increases.

(a) The board of directors shall notify the shareholders in writing of any increase in assessments for common expenses, at least thirty days prior to the increase.

(b) As used in this section, "assessments for common expenses" means any amounts collected from shareholders pursuant to the terms of the corporation's bylaws, articles of incorporation, or proprietary leases, for the operation, maintenance, management, repair, replacement, and improvement of the land, buildings, and any other real or personal property owned or leased by the corporation.

§ 421I-9 Mediation and arbitration of disputes. At the request of any party, any dispute concerning or involving one or more shareholders and a corporation, its board of directors, managing agent, resident manager, or one or more other shareholders relating to the interpretation, application, or enforcement of this chapter or the corporation's articles of incorporation, bylaws, or rules adopted in accordance with its bylaws shall be submitted first to mediation. When all reasonable efforts for mediation have been made and the dispute is not settled either in conference between the parties or through mediation, the dispute shall be submitted to arbitration in the same manner and subject to the same requirements, to the extent practicable, which now apply to condominium property regimes under part VII of chapter 514A or section 514B-162.

§ 421I-10 Applicability of other laws. Nothing in this chapter shall be construed to relieve any corporation from compliance with or being subject to any other applicable law.

§ 421I-11 Application of Hawaii business corporation act. The provisions of the Hawaii Business Corporation Act, chapter 414, shall apply to cooperative housing corporations, except to the extent that the provisions of chapter 414 are inconsistent with this chapter.

§ 421I-12 Employees of cooperative housing corporations; background checks. The board of directors of a cooperative housing corporation, or the manager of a cooperative housing project, upon the written authorization of an applicant for employment as a security guard or manager or for a position that would allow the employee access to the keys of or entry into the units in the project or access to corporation funds, may conduct a background check on the applicant, or direct another responsible party to conduct the check. Before initiating or requesting a check, the board of directors or the manager shall first certify that the signature on the authorization is authentic and that the person is an applicant for employment. The background check, at a minimum, shall require the applicant to disclose whether:

- (1) The applicant has been convicted in any jurisdiction of a crime that would tend to indicate the applicant is unsuited for employment as an employee with access to corporation funds or the keys of or entry to the units in the project; and
- (2) The judgment of conviction has not been vacated.

For purposes of this section, the criminal history disclosure made by the applicant may be verified by the board of directors, manager, or other responsible party, if so directed by the board or the manager, by means of information obtained through the Hawaii criminal justice data center. The board or manager may conduct a criminal history record check directly through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information which shall include but not be limited to the applicant's name, social security number, date of birth, and gender. This information shall be secured only for the purpose of conducting the criminal history record check authorized by this section. Failure of a cooperative housing corporation or the manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against the corporation or manager for acts and omissions of the employee hired.

§ 421I-13 Service of process. The board of directors of the corporation shall establish a policy to provide reasonable access to persons authorized to serve civil process in compliance with section 634-21.5.

oOo