

## Non-Profit Organizations

Presented by  
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## What is a non-profit organization?

- A non profit organization is an organized legal entity created for specific purposes the government has identified as beneficial to the public welfare and that does not provide private inurement to any private shareholder or individual.

## What?

- You have to be doing good things
- The government defines what those “good things” are in the Internal Revenue Code
- You cannot be making couple people rich

Non-profit... No profit...  
Same thing...

**WRONG!!!**

## For-profit vs. Non-profit

- Individuals hold equity in the organization (i.e., owners or stockholders)
- Operated for the benefit of its owners (i.e., maximization of profits)
- Cannot engage in private inurement (i.e., no owners or stockholders)
- Operated for the benefit of the public or its beneficiaries

## Profits for non-profits

- “*Not-for-profit, or nonprofit, is not synonymous with unprofitable. In fact, the term is not only a misnomer but has impeded many nonprofits from succeeding in their missions and being good stewards of the resources entrusted to them by donors. Nonprofits have been able to engage in for-profit activities, possibly even free of the unrelated business income tax (UBIT), as long the activities further their charitable purposes and do not constitute a substantial part of their activities. These efforts can be chancy because the entire burden, cost, and risk of failure remain on the nonprofit.*”

From *True Sustainability: A New Model to Aid Nonprofits in Developing Self-Sustaining Revenue Streams* (<http://www.guidestar.org/DisplayArticle.do?articleId=795>)

Okay... So what's a Super 8(a)?

A digression to the Small Business Administration...

**Small Business Administration §124.3**

**124.3 What definitions apply to the 8(a) program?**

124.301 **Who qualifies as a minority-owned business?**

124.302 **Who qualifies as a woman-owned business?**

124.303 **Who qualifies as a veteran-owned business?**

124.304 **Who qualifies as a disabled veteran-owned business?**

124.305 **Who qualifies as a Native Hawaiian-owned business?**

124.306 **Who qualifies as a socially disadvantaged business?**

124.307 **Who qualifies as a HUBZone business?**

124.308 **Who qualifies as a service-disabled veteran-owned business?**

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*Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.*

**U.S. Small Business Administration**  
**SBA**  
 Your Small Business Resource

**The Native Hawaiian Organization (NHO)**

An NHO is a community service organization serving Native Hawaiians

A non-profit corporation that has filed articles of incorporation with the Hawai'i Department of Commerce and Consumer Affairs

Is controlled by Native Hawaiians

Whose activities principally benefit Native Hawaiians

For profit 8(a) firms may become subsidiaries of NHOs

The NHO must acquire 51% of the 8(a) firm

The 8(a) firm can be located anywhere in the United States

The Benefit – non-bid contracts of unlimited size

**PUBLIC LAW 108-87-SEPT. 30, 2003**

*Provided further, That businesses certified as 8(a) by the Small Business Administration pursuant to section 8(a)(15) of Public Law 85-536, as amended, shall have the same status as other program participants under section 602 of Public Law 100-656, 102 Stat. 3825 (Business Opportunity Development Reform Act of 1988) for purposes of contracting with agencies of the Department of Defense.*

**U.S. Small Business Administration**  
**SBA**  
 Your Small Business Resource

**SBA's 8(a) Program**

The firm must qualify as a small business

The firm must be a for-profit small business

The firm must be owned and controlled by a minority person

The controlling individual/individuals must be U.S. citizens

The individual's personal assets must be less than \$250,000

This excludes the personal home and business assets

The firm must have a minimum of 2 years of experience to join the 8(a) program

The firm can be in the program for nine years

The 8(a) firm can receive non-bid contracts up to \$3 million

**Defense Federal Acquisition Regulation Supplement: Sole Source 8(a) Awards to Small Business Concerns Owned by Native Hawaiian Organizations**

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement DoD appropriations act provisions permitting the award of sole source contracts to small business concerns owned by Native Hawaiian Organizations. The rule applies to manufacturing contracts exceeding \$3,000,000 and non-manufacturing contracts exceeding \$3,000,000 that are awarded under the Small Business Administration's 8(a) Program.

DATES: Effective Date: July 26, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before September 26, 2005 to be considered in the formation of the final rule.

## Digression over...

Mahalo to the Small Business Administration for their slides...

## Now about those “good things”...

- "Public benefit corporation" means any corporation designated by statute as a public benefit corporation, or any corporation that is recognized as exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or that is organized for public or charitable purposes and upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Kden... says who???

The State...

## HRS 414D

### “Hawaii Nonprofit Corporations Act”

- [http://www.capitol.hawaii.gov/hrscurrent/Vol08\\_Ch0401-0429/HRS0414D/](http://www.capitol.hawaii.gov/hrscurrent/Vol08_Ch0401-0429/HRS0414D/)
- Department of Commerce and Consumer Affairs
- Business Registration Division
- (In the old post office building across from `Iolani Palace, 2nd floor)

- **§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. [L 2001, c 105, pt of §1; am L 2002, c 130, §39; am L 2003, c 124, §24]



## Members...

You're not required to have them

## Board of Directors

- **[§414D-131] Requirement for and duties of the board.** (a) Each corporation shall have a board of directors.
- (b) Except as provided in this chapter or subsection
- (c) all corporate powers shall be exercised by or under the authority of its board including the management of the corporation's affairs.
- (c) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities. [L 2001, c 105, pt of §1]

- **[§414D-132] Qualifications of directors.** All directors shall be individuals. A director need not be a resident of this State or a member of the corporation unless required by the articles of incorporation or the bylaws. The articles or bylaws may prescribe other qualifications for directors. [L 2001, c 105, pt of §1]

- **[§414D-133] Number of directors.** (a) A board of directors shall consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.
- (b) The number of directors may be increased or decreased (but to no fewer than three) from time to time by amendment to or in the manner prescribed in the articles or bylaws. [L 2001, c 105, pt of §1]

## More on members...

- **[§414D-134] Election, designation, and appointment of directors.** (a) If the corporation has members, all the directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election, or provide that some of the directors are appointed by some other person or designated representative.
- (b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board. [L 2001, c 105, pt of §1]

## Bylaws

- **[§414D-36] Bylaws.** (a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.
- (b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation. [L 2001, c 105, pt of §1]

### ARTICLES OF INCORPORATION

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

The undersigned, desiring to form a nonprofit corporation under the laws of the State of Hawaii, certify as follows:

The name of the corporation shall be:

\_\_\_\_\_

The mailing address of the corporation's initial principal office is:

\_\_\_\_\_

The corporation shall have and continuously maintain in the State of Hawaii a registered office and a registered agent. The agent may be an individual resident of Hawaii, a domestic entity or a foreign entity authorized to transact business in the State, whose business office is identical with the registered office.

4. The name (and state or country of incorporation, formation or organization, if applicable) of the corporation's registered agent in the State of Hawaii is:

\_\_\_\_\_

5. The street address of the corporation's initial registered office in the State of Hawaii is:

\_\_\_\_\_

The name and address of each incorporator is:

Name	Address

Please check one:

The corporation has members.

The corporation has no members.

The corporation is exempt from federal and state income taxes under section 501(c)(3) of the Internal Revenue Code. No dividends shall be paid and no part of the income or profit of the corporation shall be distributed to its members, directors, or officers, except for services actually rendered to the corporation, and except upon liquidation of its property in case of corporate dissolution.

The undersigned certifies under the penalties of Section 1701 of the Internal Revenue Code, that the undersigned has read the above statements and that the same are true and correct.

Signed this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
 Signature of incorporator

\_\_\_\_\_  
 Signature of incorporator

# Meet the IRS

[www.irs.gov](http://www.irs.gov)

### Charity - Required Provisions for Articles

A charity's organizing document must limit the organization's purposes to one or more of the exempt purposes set forth in section 501(c)(3) and must not expressly empower it to engage, other than as an insubstantial part of its activities, in activities that are not in furtherance of one or more of those purposes. This requirement may be met if the purposes stated in the organizing document are limited in some way by reference to section 501(c)(3). In addition, assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose described in section 501(c)(3), or to the federal government or to a state or local government for a public purpose. To establish that an organization's assets will be permanently dedicated to an exempt purpose, the organizing document should contain a provision insuring their distribution for an exempt purpose in the event of dissolution. Although reliance may be placed upon state law to establish permanent dedication of assets for exempt purposes, an organization's application can be processed by the IRS more rapidly if its organizing document includes a provision insuring permanent dedication of assets for exempt purposes. For examples of provisions that meet these requirements, see [Sample Articles](#).

If the organizing document does not contain these provisions, an organization should amend it before submitting its exemption application. See [Amending Organizing Documents](#) for more information.

### What's missing? A lot...

- Third:** Said corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.
- Fifth:** No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Third hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

If reference to federal law in articles of incorporation imposes a limitation that is invalid in your state, you may wish to substitute the following for the last sentence of the preceding paragraph: "Notwithstanding any other provision of these articles, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation."

**Sixth:** Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

### For next week...

- Bring your articles and bylaws if you have them
- If not...
- Choose an incorporator
- Choose a registered agent
- Select directors
- Decide on your purpose/goal/mission
- Decide if you will have members
- Bring all the needed addresses!!!

### A hui hou!