

Q&A

Questions and Answers on Directors in Arrears

What's this you're saying about directors in arrears?

Every year, on the Annual Information Return (AIR), the Agency asks each co-op about board members in arrears. Director arrears put a co-op at risk and are bad news for the membership.

Why is having directors in arrears bad news?

Co-ops' answers to questions on the AIR have consistently pointed to a strong link between director arrears and member arrears. We can't say that one causes the other, but we do know this:

At their latest report to the Agency, one in four co-ops had at least one director in arrears. The arrears and bad-debts rate for the membership of these co-ops was four times the rate seen in co-ops without director arrears.

- Scoop (editorial) Winter 2011

Higher arrears increase a co-op's risk of getting into financial trouble. They can mean not being able to keep up with repairs or put aside enough money for future work.

Your co-op may be beating these statistics today, but don't assume that your luck will hold. It hasn't for other co-ops.

Board Members are co-op members. Don't they have the same rights as everyone else?

The law holds directors to a higher standard than other co-op members. Being a director is serious business. Acting together as the board, directors have a duty to manage the business of the co-op. And, as individuals on that board, they have a duty beyond that of members—to put the best

interests of the co-op ahead of their own at all times. Owing money to your co-op is clearly not in your co-op's best interests.

Our by-laws say that a director can have arrears if they are following a repayment agreement. Doesn't that solve the problem?

Unfortunately not. Your housing co-op was not set up to make interest-free loans, and arrears are still arrears, even if someone promises to pay later. A signed-and-sealed promise will not help your co-op with its bills.

Something beyond the practical is also at stake. Directors are leaders who are expected to set an example. If they don't pay on time, that example is saying that nobody has to pay on time. As page 13 of CHF Canada's [Good Governance](#) publication points out, "Directors in arrears don't have the moral authority to collect housing charges when they're not paying up themselves."

Our co-op is a community and our members are good people. Why shouldn't we help a fellow director in their time of need?

It sounds harsh, but housing co-ops need to remember that they can't help anyone if they can't stay in business. Unpaid housing charges mean less money for the co-op to pay its own bills.

If your board wants to let a member in difficulty sign a repayment agreement, by all means do so, if your co-op's cash flow and by-laws or rules allow for this. But first see them off the board.

What does the Agency want us to do about directors in arrears?

The Agency is strongly encouraging co-ops to adopt a rule or by-law provision that will help prevent future problems. Our sample by-laws and rules say that a member in arrears may not be elected to the board.

The sample by-laws also say that if a director falls into arrears, they will cease to be a director after a brief time to allow for the correction of an honest mistake. No further action from the board would be necessary. Ask your relationship manager for a sample stand-alone by-law or language to amend your present by-laws or rules.

Our co-op never has arrears, so why should we bother amending our by-law?

The easiest time to add this point to your by-laws or rules is when you don't have arrears. Your co-op is in a strong position now. Why not do the right thing? Then, if a problem arises later, you'll be protected. To twist an old expression, better to close the barn door while the horse is still inside.

Our co-op has a workout. We're too busy for this.

Co-operatives in financial difficulty can't afford arrears and bad debts. Their boards are stewards of more borrowed money than most co-ops owe. These co-ops need principled leadership to return them to good health.

Some co-operatives with financial workouts have signed an agreement that says they cannot have directors in arrears. They will find it easier to

comply with this condition if, under their by-laws, a person in arrears may neither stay on the board nor run for election.

The best person on our board is in arrears. We couldn't govern our co-op without them.

If this person was no longer a director, your board could still agree to consult them whenever their expertise was needed. They could also fill a non-voting role, such as recording secretary, where they could speak, with the chair's permission, but not vote.

Sometimes, too, when a valued person moves out of a role they've filled for some time, other talents come forward. Don't let fear keep you from doing the right thing. If this person is as good as you think, they would choose to take the high road by leaving the board, rather than place themselves and other directors in a conflict of loyalty.

What do we do next?

Log on to the Agency's [client website](#) and download a copy of the sample amending language or stand-alone by-law. Or ask your relationship manager to e-mail you a copy. Co-ops in Ontario might also like to check the information sheet prepared by CHF Canada's Ontario Region on changing a [by-law](#).

Once you have passed the by-law or rule change, you'll be able to respond "Yes!" to Representation 108 (b) when your co-op is filing its next AIR.

November 2011