

# Q&A

## Questions and Answers on Directors in Arrears

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

Every year, the Agency asks each co-op about board members in arrears. Co-ops' answers point to a strong link between director arrears and member arrears, including arrears the co-op is doubtful it will collect (known as bad debts). We can't say that one causes the other, but we do know that director arrears and higher membership arrears are very often seen together.

Member arrears increase a co-op's risk of getting into financial trouble. Typically, co-ops that allow this problem to persist over time have trouble keeping up with repairs or putting aside enough money for future work on their property. They may even struggle to pay their regular bills on time.

Your co-op may be coping with your arrears today, but you can't assume that your luck will hold. It hasn't for other co-ops.

### How would the board even know if a director is in arrears? Isn't it confidential information?

Some co-op managers give the board only a numbered list of arrears cases, without names or unit numbers, believing that this personal information is private. But privacy law does not cover debts. As the governing body, the board is entitled to full information about arrears. The Agency strongly recommends that the monthly arrears report to the board include names and unit numbers, as well the amounts owed. That way, directors can ask questions and staff will not have to worry that "spilling the beans" about a director in arrears will put their job at risk.

### 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. Acting together as the board, directors have a duty to manage or oversee the management 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. This is known as "fiduciary duty." 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. Arrears are still arrears, even if someone promises to pay later. A signed-and-sealed promise will not help your co-op pay its bills.

Something else is at stake. Directors are leaders in their community and are expected to set an example. If they don't pay on time, their 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

leave the co-op with less money to pay its own bills. If payment never comes in, other members will have to make up the difference with higher housing charges.

The co-op needs to ask itself whether it is really helping a member by allowing them to fall further into debt. Most members will have a hard time repaying any arrears. When they fail to pay, they put themselves at risk of eviction. The best way to support them in difficult times is to act promptly before the arrears get out of hand. By stepping in, you are preventing members from losing the right to occupy their home. And you are protecting your community from developing a culture of non-payment.

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 ensure they are off the board.

### **What does the Agency advise us to do about directors in arrears?**

The model rules or by-laws available from several federations now include a paragraph that prohibits members with arrears from being elected to the board. They 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 is necessary.

Another option is to use the Agency's sample stand-alone by-law or language developed to amend your rules. Ask your relationship manager for information on your options.

### **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 make the change? That way, 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 financial 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 taking action to make sure your co-op's success is not compromised.

### **What do we do next?**

Check with your federation on the provision that appears in the model rules or organizational by-law for your region. 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 may also check the CHF Canada information sheet 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.

December 2015