



REAL ESTATE INSTITUTE OF CANADA  
INSTITUT CANADIEN DE L'IMMEUBLE

# **PROFESSIONAL STANDARDS HANDBOOK**

Revised April 2005

# REAL ESTATE INSTITUTE OF CANADA

## PROFESSIONAL STANDARDS HANDBOOK

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# **PART I THE ROLE OF ETHICS AND PROFESSIONAL STANDARDS IN THE REAL ESTATE INSTITUTE OF CANADA**

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## **DEFINITIONS**

### **Client:**

- a) a Member's employer;
- b) any person for whom services are provided, and with whom a consensual relationship of trust has been created, whether by express agreement or by implication; and
- c) any person who has agreed to give any remuneration or other consideration, directly or indirectly, contingent or otherwise, to a Member for services rendered or to be rendered.

### **Council:**

The term Council will apply to any Council within the Institute unless specifically delimited as follows: Real Estate Sales & Leasing Council, Real Estate Finance Council or IREM Canada Council.

### **Institute:**

The term Institute will refer to the Real Estate Institute of Canada (REIC).

### **Member:**

A Member will mean all Active Members, Affiliate Members and Candidates. All Active Members will include persons in good standing who have been awarded one of the following designations or accreditations: FRI, FRI(E), FRI(A), CMR, CLO, CLP, CRES;, CPM<sup>®</sup>, ARM<sup>®</sup>; CRF, CMOC, CRP, ARP, CRU.. All Affiliate Members will include Honourary Members, Life Members, Emeritus Members, Non-active Members, Lifetime Members and Members on Medical/Compassionate Leave, but will exclude Subscriber Status Members. For the purpose of interpreting the Code, all Candidates in good standing will also be deemed to be included under the term "Member".

## **THE PURPOSE OF THIS HANDBOOK**

This handbook has been designed for four reasons:

1. to make the Institute's Code of Professional Standards a more understandable and usable document;

2. to provide practical direction to the Members in the interpretation of the Code;
3. to describe clearly the procedures involved in enforcing the Code; and
4. to emphasise the fundamental role of the Code and its importance to the Institute.

## **REIC'S MISSION AND VISION**

REIC adopted its new mission and vision statements in June of 2004. In its mission statement, REIC “exists to advance opportunities for persons involved in real estate.” The vision of REIC is to be “the organization of choice for the real estate industry in Canada.”

One of the four cornerstones of REIC Ethics; to establish and enforce professional standards of practice for the Institute's Members.

The Institute's Code of Professional Standards is a document fundamental to the pursuit of its mission.

## **HISTORY**

The Real Estate Institute of Canada, formerly known as CIR - Canadian Institute of Realtors, was formed in 1955. The objective of its founders was to establish higher standards of practice, i.e. a “professional” standard, in real estate.

It was accepted that real estate related occupations did not have sufficiently stringent initial qualifications to be called “professions” at the entry level. The Institute was founded to establish additional requirements in the areas of education, experience and ethical conduct, thereby creating a mechanism to allow the public to identify those who had made a career commitment to the real estate business and, at the same time, establishing a national network of individuals dedicated to pursuing professional standards of qualification and practice.

Higher education and a minimum number of years of experience were, and are still, the prerequisites to membership, with the Institute's Code of Professional Standards as the ongoing mutual obligation that bound, and continues to bind, the membership together in their dedication to uncompromising standards of business practice.

The Code is, therefore, as much of a foundation stone of the Institute today as it was in 1955. It is the Members' social and business contract with the Institute, each other and the public, therefore the proclamation of their commitment to professional conduct and the high standard by which they are prepared to be judged.

## **THE IMPORTANCE OF ETHICS AND PROFESSIONAL STANDARDS**

One of the most basic defining features of professionals is that they act in such a way that personal gain is never placed above the interest or good of the public.

In the simplest terms, ethics is nothing more than proper behaviour. High ethical standards, however, demand that individuals look beyond self or corporate interest to the interests of others and the society as a whole, not just the avoidance of harm. Integrity, prudence, competence and cooperation are the cornerstones, with full disclosure (of personal interests and limitations on competence) as the most important way in which Members have undertaken to ensure a “level playing field” with informed participants.

Ethics are crucial to a healthy and productive society. They rest on the concept of a shared interest—that we all have a stake and a collective responsibility in establishing a fair and equitable social system. Whenever a position is favoured without regard for the ramifications on society, or self-interest in business overshadows the needs and rights of others, the social contract is violated.

When specific injury is done, the law comes into play. However, Members of the Real Estate Institute of Canada have, by their affiliation, set themselves apart as a distinct group of individuals dedicated to higher standards of business practice than the minimum standards set out in the law. The Code is the written and sworn contract, which sets out these higher standards by which the Members have agreed to abide.

“Ethics and Business Practice” (REIC 2600) is a required course for all REIC designation Candidates. Nonetheless, the best method of teaching ethics is by example. While it is the commitment of the Institute to enforce and emphasize the Code, it is only through the exemplary behaviour of its Members that the ultimate goal of true professionalism can be achieved.

## **THE CODE AND THE INSTITUTE**

The Articles of the Institute's Code of Professional Standards are designed to spell out, in practical terms, the general imperatives of integrity, prudence, competence, cooperation and full disclosure. However, it is important to note that they also address a number of unique circumstances within the Institute.

### **a) The Composition of the Membership**

The individual Articles of the Code have been structured to address the wide divergence of responsibilities of individual Members.

Because the Institute is made up of several designated professional groups, certain Articles require flexibility to address employee/employer relationships as well as independent contractor considerations. Further, many Members face unique demands due to agency relationships that are established in the marketplace and defined by law. In such instances,

disclosure requirements and procedures are of the utmost importance and determined by the circumstances.

For example, a licensed Realtor<sup>®</sup> who is a Member of the Real Estate Institute of Canada would be particularly concerned about agency relationships and full disclosure. With increasing attention being directed in agency law to such concepts as “express and/or implied dual agency”, the Realtor<sup>®</sup> must ensure that the disclosure clearly identifies his or her role in relation to divergent interests in a transaction. Hence, one Article addresses that specific circumstance. At the same time, a leasing officer, property manager or underwriter, as an employee, would be more concerned with duties to a principal and “fairness to other parties”. So, another Article within the Code confronts that particular issue.

**b) Membership Adherence to Other Codes**

Members of specific Councils of the Institute may also be regulated by other Codes relating to their particular area of expertise. For example, FRI and CRES Members who may also be members of the Canadian Real Estate Association must adhere to the CREA Code of Ethics and Standards of Business Practice, which are quite specific in addressing real estate trading and brokerage.

FRI Members who hold the FRI(A) accreditation not only must adhere to the REIC Code of Professional Standards but have agreed, by signing the Application for FRI(A) Accreditation, to abide by the Code of Professional Ethics and the Uniform Standards of Professional Appraisal Practice (USPAP) of the Canadian Deposit Insurance Company (CDIC) as adopted by REIC.

In most instances, the Articles of the Institute's Code complement these other standards. However, should some point of conflict arise, the Institute will enforce its rules separate and apart from any interpretations or actions taken by any other organization having jurisdiction over a Member. The Institute will, of course, take such proceedings into consideration but will not be bound by, or in any way connected to them.

The only exceptions to this policy, with respect to other Codes, are the Code of Professional Ethics of the CERTIFIED PROPERTY MANAGER<sup>®</sup> and the Code of Professional Ethics of the ACCREDITED RESIDENTIAL MANAGER<sup>®</sup>. REIC is indirectly responsible for the enforcement of these Codes, as well as the Institute's Code, with respect to its CPM<sup>®</sup> and ARM<sup>®</sup> Members. The Articles of the CPM<sup>®</sup> and ARM<sup>®</sup> Codes are specific to the responsibilities of the property manager and residential manager, and in all cases are complementary to the REIC Code. The IREM codes are administered in a manner appropriate to each individual complaint by the REIC Professional Standards Committee and the IREM Ethics and Discipline Committee. Recommendations for disciplinary action for violation of either the CPM<sup>®</sup> Code of Professional Ethics or the ARM<sup>®</sup> Code of Professional Ethics are subject to the approval of the Ethics and Discipline Committee of the Institute of Real Estate Management (IREM).

c) **Legal and Statutory Requirements**

The Code does not mention any specific legal or statutory requirements because Members are impacted by a number of different provincial and territorial regulations according to their field of practice. However, a general link Article is provided which requires that all Members “will conduct business in strict accordance with all applicable laws, Bylaws and regulations...”.

This provides the Institute with the right to take into account any violation or offence by a Member. The conviction of a Member under provincial, territorial or federal law may result in an investigation, Hearing or discipline under the Code of the Institute. Pertinent facts concerning such matters may result in, or become part of, a professional standards case. The Committee may decide to grant a stay of proceedings if requested if evidence demonstrates that continuation of proceedings would be unfair to the parties (e.g. double jeopardy) or potentially result in inconsistent findings.

d) **The Rights of the Institute to Enforce the Code**

A direct reference to REIC's right to make inquiries regarding the conduct of Members and demand the production of evidence and testimony is included in the Code. Members agree to “... cooperate in the enforcement of the Code of Professional Standards and the resolution of any matter brought before the Professional Standards Committee”.

Furthermore, the application form that must be signed by each applicant, Candidate and Member of the Institute, clearly states:

*“I shall conduct my real estate activities in accordance with the Code of Professional Standards of the Institute. I shall also be bound by the Bylaws and Rules and Regulations of the Institute, as they are now or as they may be amended from time to time subsequent to this application, and be bound by the decisions of any Institute committee and the Board of Directors affecting my candidacy or Membership in the Institute.”*

The application further requires that individuals subscribe to the official pledge of the Institute:

*“I pledge that I have read and understand the Institute's Code of Professional Standards and I agree to fulfil with integrity and diligence the obligations set out in the Code, to use my best efforts to ensure the maintenance and promotion of the Code, and to comply with all other Bylaws and Rules and Regulations of the Real Estate Institute of Canada.”*

In the applications for candidacy and membership, each prospective Candidate or Member now executes the following release:

*“I, for and on behalf of myself, and my heirs, assigns, administrators, and each of them waive and forever release all claims and demands, or causes of action and each of them, that I or they may have now or may in the future have against the Institute, its Members, Officers, Councillors, Agents, Employees, Chapters or others who may supply information or material to the Institute, and each of them, for any act or omission by the Institute, its Officers, Councillors, Employees, Chapter or any others and each of them including but not in any way limited to its or their acts or omissions in granting candidacy or membership, failing to grant candidacy or Membership, or in censuring, suspending, expelling or terminating such candidacy or membership.”*

Whether this Release was contained in the application executed by a Member or Candidate or not, it will be a term of the contract between each Member and Candidate and the Institute, and between Members and Candidates. If the application executed by the Member or Candidate did not contain this Release, and if the Member or Candidate does not agree to the terms of the Release repeated above or the Release set out below, he or she will terminate his or her candidacy or Membership within thirty (30) days of the receipt of this Code of Professional Standards. If the Member or Candidate does not terminate his or her membership or candidacy in the time period specified, he or she will be deemed to have agreed to the terms of the Release set out above and the Release set out below.

*“The complainant will not be liable for any damages suffered by the party charged as a result of the complaint. Neither the Institute, any Officer, Employee nor Agent thereof, not any Member of the Board of Directors nor any Member of the Professional Standards Committee, Hearing Panel or Appeal Board, will be liable for any action or omission in the course of the procedures set out herein. All claims and causes of action for damages, costs or any matter whatsoever which may arise out of any procedure set out herein will be deemed waived by all Members, Candidates, or others, subject to the jurisdiction of the Institute, or others holding or seeking an accredited status in the Institute, as a condition of obtaining and continuing membership, maintenance of Candidate status or the initial granting of and continuation of an accreditation.”*

## **THE FUNDAMENTAL RESPONSIBILITY OF EVERY MEMBER**

This Handbook for the Code of Professional Standards is a reaffirmation of the Institute's commitment to high ethical standards. *Members are given the right to use designations awarded by REIC, and this right is contingent upon continued membership in the Institute.* The value of any designation is directly tied to the reputation and skill of the user. It is incumbent upon the Institute to ensure that such users fully subscribe to the Code. An unethical practice is not only a violation of the public trust; it is an offence against all Members of the Institute.

Professional organizations succeed or fail based upon the public perception of their members' skill and standards. The Institute sets criteria for membership and, in granting designations, is establishing a level of competence acceptable for individual practitioners participating in REIC. It is the obligation of the Institute and every individual Member to be vigilant in ensuring that all REIC Members meet the minimum standards of the Code, and that violations are promptly brought to the attention of the Professional Standards Committee.

The fundamental duty of every Member is the maintenance and promotion of the Institute's Code of Professional Standards in order to ensure that the credibility of REIC, its designations and its Members are never compromised.

## **DUTIES OF MEMBERSHIP**

All Members are required to comply with the Code of Professional Standards and are also urged to participate in its enforcement. When circumstances warrant, Members should, after careful consideration, use the procedures outlined to file complaints *in writing* with the Professional Standards Committee. It is only with the ongoing vigilance of all Members that the Institute's standards will be maintained.

## **DUTIES OF THE CHAPTERS**

Local Chapters have been created for the purpose of Member education, networking, study of local markets and the advancement of the objectives of the Institute. With respect to professional standards, individual Chapters are expected to:

- a) organize, co-operate with others in organizing, or identify local educational programs to expand membership awareness of current issues and appropriate standards of business practice;
- b) actively promote and cooperate in organizing any national or regional Institute education programs relating to professional standards;
- c) assist, upon request, the Executive Vice President, Committee Liaison, the Board of Directors or any Committee, Panel or Appeal Board involved in the resolution of a professional standards complaint; and

- d) provide assistance, when called upon by the Chair of the Professional Standards Committee or Committee Liaison, in the selection of Members for the Committee, Panel or Appeal Board Hearing cases or Appeals relating to the Code of Professional Standards.

### **DUTIES OF THE COUNCILS**

The Rules and Regulations provide that the Councils “will consider matters relating to education, admission requirements and ethics”. Specifically in regard to ethics and professional standards, the Council is expected to:

- a) provide assistance when requested by the Executive Vice President, Committee Liaison, the Board of Directors or any Committee, Hearing Panel or Appeal Board in matters concerning professional standards complaints, investigations or Hearings;
- b) make recommendations as required to the Board of Directors concerning amendments or clarifications to the Code of Professional Standards, the Guiding Principles, the Interpretations or the procedures for handling cases;
- c) provide assistance, when called upon by the Chair of the Professional Standards Committee or Committee Liaison, in the selection of Members for the Committee, the Hearing Panel or the Appeal Board; and
- d) encourage and promote courses, publications and membership sessions relating to ethics and business practices.

### **DUTIES OF THE BOARD OF DIRECTORS**

The Board of Directors has certain rights and duties in administering the Code of Professional Standards. The Board must give its ultimate approval for any disciplinary or other action that is recommended as a result of the Hearing procedures in Professional Standards cases. The Board of Directors is empowered to revoke the membership of, or otherwise discipline, any Member, Active or Affiliate, for breaching the Bylaws, Rules and Regulations or Code of Professional Standards.

The Board of Directors may approve one or more of the following forms of disciplinary action:

1. a letter of reprimand;
2. suspension of membership or Candidate Status for a certain period, or until a specified action is taken by the Member or Candidate;
3. expulsion from membership or candidacy;
4. payment of a fine to the Institute;

5. payment of an amount fixed by the Panel which approximates the cost borne by the Institute for the Hearing; or
6. attendance and successful completion of an Institute course or courses, or any other educational program deemed appropriate.

The final decision or outcome of each and every ethics and unauthorised use of designation case will be published in EXCHANGE, the REIC member newsletter, and a copy of the public notice sent to the local Chapter. Where applicable, copies will also be sent to IREM.

## **PART II THE CODE OF PROFESSIONAL STANDARDS OF THE REAL ESTATE INSTITUTE OF CANADA**

### ***THE CODE OF PROFESSIONAL ETHICS OF THE CERTIFIED PROPERTY MANAGER®***

### ***THE CODE OF PROFESSIONAL ETHICS OF THE ACCREDITED RESIDENTIAL MANAGER®***

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The objective of these Codes is to establish and define a set of standards of business practice required of REIC Members.

The Member should follow the spirit as well as the letter of these Codes. Public confidence in professions involved with real estate may be eroded by irresponsible conduct on the part of an individual Member. Accordingly, Members should:

- a) endeavour to conduct themselves at all times so as to reflect credit on the Institute;
- b) inspire the confidence, respect and trust of their clients and the community; and
- c) strive to avoid even the appearance of impropriety.

### **GUIDING PRINCIPLES AND INTERPRETATIONS**

Some of the Articles contained within the Codes have been expanded by using interpretations to help clarify the applications of the Codes for Members in the daily pursuit of their careers, and for Committee Members charged with the responsibility of monitoring and enforcing the Codes.

Where appropriate, examples and scenarios have been developed to reflect the activities of each of the Institute's Councils. The Handbook is regularly updated and revised to ensure that the information provided is timely and accurate.

It is important to note that the headings for each article should not be interpreted. They are provided simply to assist in the use and reading of the Codes.

**THE CODE OF PROFESSIONAL STANDARDS  
OF THE REAL ESTATE INSTITUTE OF CANADA**

**ARTICLE 1. "Quality of Service"**

A Member will perform professional services with competence, integrity and due regard for the public interest.

**ARTICLE 2. "Well Informed and Knowledgeable"**

A Member will maintain a high standard of professional expertise.

**ARTICLE 3. "Full Disclosure to Client"**

A Member will be forthright and impartial when advising a client, and will not withhold any information relevant to the interests of a client.

**ARTICLE 4. "Care of Property"**

A Member will care for the property of others entrusted to the Member in the same manner that a careful and prudent owner would care for similar property.

**ARTICLE 5. "Fairness to all Parties"**

A Member will at all times protect and promote the interests of a client, but will be fair and honest with all other parties involved in any matter.

**ARTICLE 6. "Referral When Lacking Competence"**

A Member will neither advise nor render service in areas or matters which exceed the Member's competence. The Member will endeavour to direct parties to those from whom competent advice and service may be obtained.

**ARTICLE 7. "Representing Divergent Interests"**

A Member will neither advise nor represent parties having divergent or conflicting interests without the informed consent of all parties.

**ARTICLE 8. "Conflict of Interest Between Client and Member"**

A Member will not:

- a) enter into a business transaction with a party to whom professional advice has been given by the Member if there is a significant risk that the interests of the Member and the client may differ; or

- b) provide advice to a party when the personal interests of the Member, a relative or an associate are in conflict with the interests of the party, without advising the party that independent advice should be obtained and securing a written acknowledgement of same from the party.

**ARTICLE 9. "Disclosure of Fees"**

A Member will not receive directly or indirectly any rebate, fee, commission, discount or other benefit, whether monetary or otherwise without the full knowledge and prior consent of the client.

**ARTICLE 10. "Fair and Reasonable Fees"**

A Member will charge fair and reasonable fees commensurate with services being provided and fully disclose the amount of such fees at the time the service is provided.

**ARTICLE 11. "Confidential Information"**

A Member will hold in strict confidence all information provided in confidence by a client, unless required by law to disclose such information.

**ARTICLE 12. "Outside Interests"**

A Member who engages in another profession, business or occupation beyond the usual scope of services provided to clients must not allow such outside interest to jeopardise the Member's professional integrity, independence or competence.

**ARTICLE 13. "Advertising"**

All advertising placed by a Member, whether on the Member's behalf or on behalf of a client, will provide accurate information regarding the subject of the advertisement, and will not be false or misleading in any respect.

**ARTICLE 14. "Use of Designations"**

A Member will not use a designation or accreditation granted by the Institute in any manner contrary to this Code of Professional Standards or the Bylaws and Rules and Regulations of the Institute.

**ARTICLE 15. "Other Institute Members"**

A Member will not make, authorise, or otherwise encourage any unfounded oral or written statements that are derogatory to, or disparaging of, another Member's

business practice. All dealings between Members will be conducted with integrity and good faith.

**ARTICLE 16. "Laws and the Conduct of Business"**

A Member will conduct business in strict accordance with all applicable laws, Bylaws and regulations, and in accordance with any Code of Professional Standards enacted by the Institute for any of its Councils.

**ARTICLE 17. "Member Co-operation in Enforcing the Code"**

A Member will assist and fully co-operate in the enforcement of the Code of Professional Standards and the resolution of any matter brought before the Professional Standards Committee.

## **THE CODE OF PROFESSIONAL ETHICS OF THE CERTIFIED PROPERTY MANAGER®**

**Introduction:** To establish and maintain public confidence in the honesty, integrity, professionalism, and ability of the professional property manager is fundamental to the future success of the Institute of Real Estate Management and its members. This Code and performance pursuant to its provisions will be beneficial to the general public and contribute to the continued development of a mutually beneficial relationship among CERTIFIED PROPERTY MANAGER® members, candidates for membership, Realtors®, clients, employers, and the public.

The Institute of Real Estate Management, as the professional society of property management, seeks to work closely with all other segments of the real estate industry to protect and enhance the interests of the public. To this end, members of the Institute have adopted and, as a condition of membership, subscribe to this Code of Professional Ethics. By doing so, they give notice that they clearly recognize the vital need to preserve and encourage fair and equitable practices and competition among all who are engaged in the profession of property management.

Those who are members of the Institute are dedicated individuals who are sincerely concerned with the protection and interests of those who come in contact with the industry. To this end, members of the Institute have subscribed to this professional pledge:

*I pledge myself to the advancement of professional property management through the mutual efforts of members of the Institute of Real Estate Management and by any other proper means available to me.*

*I pledge myself to seek and maintain an equitable, honorable, and cooperative association with fellow members of the Institute and with all others who may become a part of my business and professional life.*

*I pledge myself to place honesty, integrity, and industriousness above all else; to pursue my gainful efforts with diligent study and education to the end that service to my clients shall always be maintained at the highest possible level.*

*I pledge myself to comply with the principles and declarations of the Institute of Real Estate Management as set forth in its Bylaws, Regulations, and this Code of Professional Ethics.*

**Article 1. Fiduciary Obligation to Client:** A CERTIFIED PROPERTY MANAGER® shall at all times exercise loyalty to the interests of the client and shall not engage in any activity which could be reasonably construed as contrary to the best interests of the client. A CERTIFIED PROPERTY MANAGER® shall not represent personal or business interests divergent or conflicting with those of the client, unless the client is first notified in writing of the activity or potential conflict of interest, and consents in writing to such representation. A CERTIFIED PROPERTY MANAGER®, as a fiduciary for the client, shall not accept, directly or indirectly, any rebate, fee, commission, discount, or other benefit, monetary or otherwise, which has not been fully disclosed to and approved by the client.

**Article 2. *Disclosure:*** A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall not disclose to a third party any confidential or proprietary information which would be injurious or damaging to a client concerning the client's business or personal affairs without the client's prior written consent, unless such disclosure is required or compelled by law or regulations.

**Article 3. *Accounting and Reporting:*** A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall at all times keep and maintain accurate financial and business records concerning each property managed for the client, which records shall be available for inspection at all reasonable times by the client. A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall furnish to the client, at mutually agreed upon intervals, regular reports concerning the client's properties.

**Article 4. *Protection of Funds:*** A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall not commingle personal or company funds with the funds of a client or use one client's funds for the benefit of another client, but shall keep the client's funds in a fiduciary account in an insured financial institution or as otherwise directed in writing by the client. A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall at all times exert due diligence for the maintenance and protection of the client's funds against all reasonably foreseeable contingencies and losses.

**Article 5. *Relations with Other Members of the Profession:*** A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall not make, authorize or otherwise encourage any unfounded derogatory or disparaging comments concerning the practices of another CERTIFIED PROPERTY MANAGER<sup>®</sup>. A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall not exaggerate or misrepresent the services offered as compared with the services offered by other property managers. Nothing in this Code, however, shall restrict legal and reasonable business competition by and among property managers.

**Article 6. *Contract:*** Any written contract between a CERTIFIED PROPERTY MANAGER<sup>®</sup> and a client shall be in clear and understandable terms, and shall set forth the specific terms agreed upon between the parties, including a general description of the services to be provided by and the responsibilities of the CERTIFIED PROPERTY MANAGER<sup>®</sup>.

**Article 7. *Duty to Firm or Employer:*** A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall at all times exercise loyalty to the interests of the employer or firm with whom the CPM<sup>®</sup> is affiliated and shall be diligent in the maintenance and protection of the interests and property of the employer or firm. A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall not engage in any activity which could be reasonably construed as contrary to this obligation of loyalty and diligence and shall not accept, directly or indirectly, any rebate, fee, commission, discount, or other benefit, monetary or otherwise, which could reasonably be seen as a conflict with the interests of the employer or firm. A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall at all times exercise due diligence for the protection of the funds of the employer or firm against all reasonably foreseeable contingencies and losses.

**Article 8. *Managing the Property of the Client:*** A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall not exaggerate, misrepresent or conceal material facts concerning the client's property or any related transaction. A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall exercise due diligence in the maintenance and management of the client's property and shall make all reasonable efforts to protect it against all reasonably foreseeable contingencies and losses.

**Article 9. *Duty to Former Clients and Former Firms or Employers:*** All obligations and duties of a CERTIFIED PROPERTY MANAGER<sup>®</sup> to clients, firms, and employers as specified in this Code shall also apply to relationships with former clients and former firms and employers. A CERTIFIED PROPERTY

MANAGER<sup>®</sup> shall act in a professional manner when, for whatever reason, relationships are terminated between a CERTIFIED PROPERTY MANAGER<sup>®</sup> and clients and firm or employer. Nothing in this section, however, shall be construed to cause a CERTIFIED PROPERTY MANAGER<sup>®</sup> to breach obligations and duties to current clients and firm or employer.

**Article 10. *Compliance with Laws and Regulations:*** A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall at all times conduct business and personal activities with knowledge of and in compliance with applicable federal, state, and local laws and regulations, and shall maintain the highest moral and ethical standards consistent with the membership in and the purposes of the Institute of Real Estate Management.

**Article 11. *Equal Opportunity:*** A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall not deny equal employment opportunity or equal professional services to any person for reasons of race, color, religion, sex, familial status, national origin, age, or handicap.

**Article 12. *Duty to Tenants and Others:*** A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall competently manage the property of the client with due regard for the rights, responsibilities, and benefits of the tenant and others lawfully on the property. A CERTIFIED PROPERTY MANAGER<sup>®</sup> shall not engage in any conduct which is in conscious disregard for the safety and health of those persons lawfully on the premises of the client's property.

**Article 13. *Enforcement:*** Any violation by a CERTIFIED PROPERTY MANAGER<sup>®</sup> of the obligations of this Code shall be determined in accordance with and pursuant to the terms of the bylaws and rules and regulations of the Institute of Real Estate Management. Disciplinary action for violation of any portion of this Code shall be carried out by the Institute of Real Estate Management in accordance with the bylaws and rules and regulations established by the Governing Council of the Institute. The result of such disciplinary action shall be final and binding upon the affected CERTIFIED PROPERTY MANAGER<sup>®</sup>, and without recourse to the Institute, its officers, councilors, members, employees, or agents.

(Revised November 1994)

## **THE CODE OF ETHICS OF THE ACCREDITED RESIDENTIAL MANAGER®**

**Article 1. *Dedication:*** An ACCREDITED RESIDENTIAL MANAGER® shall be dedicated to the practice of residential management through the mutual efforts of members of the Institute of Real Estate Management, all other ACCREDITED RESIDENTIAL MANAGER® Members, and by any other proper means available.

**Article 2. *Relationship with Other Professionals:*** An ACCREDITED RESIDENTIAL MANAGER® shall not make, authorize, or otherwise encourage any oral or written statements of a derogatory nature, but rather shall seek and maintain equitable cooperation with all members of the Institute of Real Estate Management and any others who are and who may become part of the business and professional life of the ACCREDITED RESIDENTIAL MANAGER®. An ACCREDITED RESIDENTIAL MANAGER® shall not use or permit the use of the ACCREDITED RESIDENTIAL MANAGER® certification in any manner that would adversely affect the objectives and higher purpose of the Institute of Real Estate Management.

**Article 3. *Compliance with Laws and Regulations:*** An ACCREDITED RESIDENTIAL MANAGER® shall, at all times, conduct business and personal activities with knowledge of and in compliance with applicable federal, state, and local laws and regulations, and shall maintain the highest moral and ethical standards consistent with the objectives and higher purpose of the Institute of Real Estate Management.

**Article 4. *Duty to Employers and Former Employers:*** An ACCREDITED RESIDENTIAL MANAGER® shall, at all times, exercise loyalty to the employer or firm with whom the ACCREDITED RESIDENTIAL MANAGER® is affiliated and shall be diligent in the maintenance and protection of the reputations and properties of the employer or firm. An ACCREDITED RESIDENTIAL MANAGER® shall not represent divergent or conflicting interests nor engage in any activity reasonably calculated to be contrary to the best interest of the employer or employer's property unless the employer has been previously notified. All obligations and duties of an ACCREDITED RESIDENTIAL MANAGER® to employers and firms as specified in this Code shall also apply to relationships with former employers and firms.

**Article 5. *Fiduciary Responsibility:*** An ACCREDITED RESIDENTIAL MANAGER® shall not receive, directly or indirectly, any rebate, fee, commission, discount, or other benefit, whether monetary or otherwise, without the full knowledge of and prior consent by the client, employer or firm concerned.

**Article 6. *Confidentiality:*** An ACCREDITED RESIDENTIAL MANAGER® shall not disclose to a third party confidential information concerning the business or personal affairs of the client, employer or firm without prior authorization.

**Article 7. *Reporting and Record Keeping:*** An ACCREDITED RESIDENTIAL MANAGER® shall keep the client, employer or firm currently advised in all matters concerning the welfare of the properties assigned to the ACCREDITED RESIDENTIAL MANAGER®, and shall at all times keep and maintain such accurate records as shall be required.

**Article 8. *Duty to Residents and Others:*** An ACCREDITED RESIDENTIAL MANAGER® shall competently manage the properties assigned to the ACCREDITED RESIDENTIAL MANAGER® with due regard for the rights, responsibilities, and benefits of the residents and others lawfully on the property. An ACCREDITED RESIDENTIAL MANAGER® shall not engage in any conduct which is in conscious disregard for the safety and health of those persons lawfully on the premises.

**Article 9. *Equal Opportunity:*** An ACCREDITED RESIDENTIAL MANAGER® shall not deny equal employment opportunity or equal professional services to any person for reasons of race, color, religion, sex, familial status, national origin, age, or handicap.

**Article 10. *Maintaining the Property:*** An ACCREDITED RESIDENTIAL MANAGER® shall also be concerned with prompt attention to the maintenance requirements of the properties to assure consistent service and to establish and/or sustain the good reputation of the properties assigned to the ACCREDITED RESIDENTIAL MANAGER®.

**Article 11. *Enforcement:*** The interpretation of compliance with this Code is the responsibility of the Ethics and Discipline Committee of the Institute of Real Estate Management. Disciplinary action for violation of any portion of this Code shall be instituted by the Governing Council of IREM® in accordance with rules and regulations established by the Governing Council.

(Revised November 2002)

## **PART III ADMINISTRATION AND ENFORCEMENT OF THE CODE OF PROFESSIONAL STANDARDS**

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### **DUTIES AND COMPOSITION OF THE PROFESSIONAL STANDARDS COMMITTEE**

The Professional Standards Committee is a standing committee of the Institute. Pursuant to the Bylaws of the Institute, the President will appoint the Chair of the Committee. The Members of the Committee will be appointed by the Chair, in consultation with the President, but may not be members of the Board of Directors. The Committee will have at least one Member representing each Council, provided that the Chair of the Committee and the Council Chair may agree that a particular designation need not have representatives on the Committee. If a designation is not represented, the Committee will not proceed with any matter affecting a Member holding that designation until a designation representative is appointed to the Committee. The Professional Standards Committee will have at least three Members. All members agreeing to serve shall sign a Confidentiality Agreement.

The Professional Standards Committee may investigate and hold Hearings through Hearing Panels, and will carry out such other duties as outlined in the procedures for handling professional standards complaints and cases. The Committee will make recommendations to the Board of Directors regarding any actions to be taken as a result of unethical or improper conduct by a Member or Candidate or others subject to the jurisdiction of the Institute.

The Professional Standards Committee will submit all recommendations to the Board of Directors involving discipline or any other action to be taken as a result of a Hearing. No action will be taken on the basis of such a recommendation without the approval of the Board of Directors.

If a complaint is instigated by the REIC Board of Directors, the result of the complaint must be approved by a body other than the board, but constituted by the Board. This could include an Ad-Hoc or Standing Committee struck by the Board specifically to review and ratify a complaint. The Board derives its authority in such cases from Bylaw 04-1, Section 11 which states:

*“The Committees of the Corporations shall be those Committees as may be established from time to time by the Board of Directors”.*

### **HEARING PROCEDURES FOR PROFESSIONAL STANDARDS CASES:**

#### **I Mandate of the Professional Standards Committee:**

1. The Professional Standards Committee may investigate, hold Hearings and take any other appropriate action in response to ethics complaints concerning matters over which the Institute has jurisdiction through its Bylaws, Rules and Regulations and the Code of Professional Standards.

2. The Committee will, upon receipt of a written complaint regarding any alleged unethical or improper conduct by any Member, Candidate, or Affiliate Member subject to the jurisdiction of the Institute, inquire into such matters in accordance with the procedures outlined here.
3. Upon its own motion, the Committee may investigate the actions of any Member, Candidate or Affiliate Member subject to the jurisdiction of the Institute, when there is reason to believe that such party has failed to fulfil the requirements of the Code of Professional Standards. If so satisfied, the Committee will prepare a complaint and inquire into the matter in accordance with the procedures outlined here.

## **II Manner of Initiating a Complaint:**

Any person, whether a Member of the Institute or not, having reason to believe that a Member, Candidate or Affiliate Member has failed to fulfil the requirements of the Code of Professional Standards, may file a complaint with the Committee by delivering a *signed and dated statement* of the facts on which the complaint is based to the Professional Standards Committee, care of the Professional Standards Committee Liaison, at the Head Office of the Institute.

## **III Handling of a Complaint:**

1. Upon receipt of the complaint, the Committee Liaison will send a copy of this Handbook of Professional Standards to the complainant, together with a letter advising him/her:
  - a) to review the document carefully; and
  - b) that the complainant's identity will not be concealed from the person against whom he/she is lodging the complaint.

Not sooner than seven (7) business days later, the Committee Liaison will send a copy of the complaint, marked "Private and Confidential", to the Chair and Members of the Professional Standards Committee and, by courier, registered mail, or other method requiring a signed receipt of delivery, to the person against whom the complaint was made.

2. The Committee will decide that:
  - a) no further action is warranted, which decision will not be subject to review or Appeal; or
  - b) further action is warranted, and the Chair will then appoint a person as a "Researcher" to investigate the facts alleged in the complaint and the surrounding circumstances.

3. A complaint must be filed within one year after the facts could have been known in the exercise of reasonable diligence.

#### **IV The Selection and Function of a Researcher:**

1. The Researcher should, wherever feasible, hold the same designation as the individual against whom the complaint was made. The Researcher may be a Member of the Professional Standards Committee. The Researcher may request the production of any evidence relevant to the complaint.
2. Failure by any Member, Candidate or Affiliate Member to co-operate fully with the Professional Standards Committee (including a Researcher, Hearing Panel or Appeal Board) in the resolution of a complaint will constitute a breach of the Code of Professional Standards, and may result in membership being revoked or other disciplinary action in accordance with the Bylaws and Rules and Regulations of the Institute.
3. The Researcher will, upon completion of the investigation, deliver a written report, with all relevant evidence, to the Chair of the Professional Standards Committee, care of the Committee Liaison. Upon receipt of the report, or earlier if circumstances warrant, the Chair will convene a meeting of the Committee. The Committee will decide that:
  - a) no further action is warranted, which decision will not be subject to review or Appeal; or
  - b) further action is warranted, and prepare a Charge of Professional Misconduct.
4. The Researcher must conclude the investigation within 30 days of appointment by the Professional Standards Committee.

#### **V The Preparation of a Charge:**

1. A Charge of Professional Misconduct will state full particulars of the alleged misconduct and will specify the Article(s) of the Code of Professional Standards the requirements of which have not been fulfilled.
2. The Committee Liaison will send, marked "Private and Confidential" by courier, registered mail, or other method requiring a signed receipt of delivery, a copy of the Charge to the person being charged, at the address of such person as shown on the records of the Institute.
3. The Charge will advise the Member of the right to make a written reply to the Charge and that, if no reply is received within thirty (30) days of the date of the letter, the Committee may proceed without further notice.

## **VI Stay of Proceedings**

1. The Member may request a stay of proceedings in the event that there is pending litigation related to the complaint.
2. If notice of a request to stay the proceedings is received, due to litigation, the Committee shall make the decision whether or not to stay the proceedings after appropriate inquiry into the nature of the litigations. The decision as to whether or not to stay the proceedings shall be supported by evidence to demonstrate that continuation of proceedings would be unfair to the parties (e.g. double jeopardy) or potentially result in inconsistent findings.

## **VII Disposition of Reply:**

1. Upon receipt and review of the Reply, the Committee will decide that:
  - a) no further action is warranted, which decision will not be subject to review or Appeal; or
  - b) further action is warranted, and
    - i) refer the Charge to a Hearing Panel for disposition, or
    - ii) render a decision and recommend non-monetary disciplinary action, subject to approval by the Board of Directors.
  - c) a stay of proceedings due to litigation (if requested), may be granted.
2. If the matter is referred to a Hearing Panel, the Researcher, or such other person as may be appointed by the Committee, will attend and assist at the Hearing of the complaint.

## **VIII Composition of the Hearing Panel:**

A Hearing Panel will consist of not less than three (3) Members who have been Members of the Institute for not less than three (3) years and hold the same designation as the Member about whom the complaint has been made. The majority of the Members will be familiar with the expected level of professional activity in the field in question. The Chair and Members of a Hearing Panel will be appointed by the Chair of the Professional Standards Committee. Members of the Hearing Panel will be neither Members of the Professional Standards Committee nor the Board of Directors.

## **IX Hearing Panel Procedure:**

1. Within seven (7) days, the Chair of the Hearing Panel will set a date, time, and location for the Hearing, after consulting with the Executive Vice President. The Committee

Liaison will notify the following persons of the Hearing in writing by registered mail, together with an acknowledgement of receipt card, to their current address shown in the records of the Institute, and to be received at least thirty (30) days prior to the date of the Hearing: the Researcher or other appointee of the Committee; all Members of the Hearing Panel; any witnesses who are to be called; the complainant; and the person charged.

2. The complainants may be asked to testify by the Hearing Panel or by the Researcher, or may themselves elect to testify at the Hearing.
3. The person charged or the complainant may be represented by a lawyer or a Member of the Institute, provided that notification of such representation is received by the Committee Liaison no less than seven (7) days prior to the Hearing date.

At least ten (10) days prior to the date set for the Hearing, the notice of Hearing will advise such persons of this right.

4. The parties will present to the Panel all relevant evidence, including the testimony of witnesses having knowledge of the facts of the matter. All documentation introduced at the Hearing will be kept in the safe custody of the Hearing Panel until any Appeal of the decision has been concluded.
5. The Hearing may be adjourned by a majority of the Members of the Hearing Panel. In the event of an adjournment that is not to a fixed date, the persons at the Hearing will be notified of the date, time and place at which the Hearing is to be continued, by notice in writing by registered mail, received at least twenty (20) days prior to the date of the continuation of the Hearing.
6. The decision of a majority of the Members of the Hearing Panel will be deemed to be the decision of the Hearing Panel. If a majority decision cannot be reached, a new Hearing will be held and a new Hearing Panel appointed by the Chair of the Professional Standards Committee.
7. Legal counsel for the Institute may serve as an advisor to the Hearing Panel and the Executive Vice President or Committee Liaison will serve as secretary to the Hearing Panel.
8. The panel may proceed with the Hearing in the absence of the person charged if satisfied that the required notice has been given.

## **X Decision by Hearing Panel:**

1. The Panel will find that the person charged has:
  - a) not failed to fulfil the requirements of the Code of Professional Standards; or

- b) failed to fulfil the requirements of the Code of Professional Standards and recommend what disciplinary action, if any, be taken by the Board of Directors.
2. The Hearing Panel will render its decision as soon as possible but not more than twenty-one (21) days after the completion of the Hearing.
  3. The decision of the Panel will:
    - a) be in writing and signed by the Chair of the Panel;
    - b) specify the decision;
    - c) specify the discipline being recommended;
    - d) specify the Article(s) of the Code which have been found to have been contravened;and will be delivered by the Committee Liaison, by courier, registered mail, or other method requiring a signed receipt of delivery, to:
    - a) the Chair of the Professional Standards Committee; and
    - b) the person charged, and such notice will inform the person charged of their right to appeal the decision of the panel, and the procedure for Appeal.

## **XI Approval by the Board of Directors:**

1. A decision of a Hearing Panel or Appeal Board that a person has failed to fulfil the requirements of the Code of Professional Standards will have no force or effect until approved by the Board of Directors or its designated body as described in paragraph 4 under “Duties and Composition of the Professional Standards Committee” on page 19.
2. If no Appeal is filed, the decision of the Panel will be presented by the Chair of the Professional Standards Committee, or designee, to the Board of Directors for approval during an in camera session and without revealing the name of the person charged, at the next scheduled meeting following the expiry of the appeal period.
3. The Board of Directors will, by a decision of the majority of Members present at the meeting, respond to the decision of the Hearing Panel or of the Appeal Board of the Professional Standards Committee, as follows:
  - a) approve the decision and the disciplinary action to be imposed; or
  - b) order a new Hearing to take place before a new Hearing Panel.

4. Notice in writing of the decision of the Board of Directors will be sent by courier, registered mail, or other method requiring a signed receipt of delivery, to the individual charged and to the complainant.

## **XII Disciplinary Action:**

The Hearing Panel may recommend one or more of the following forms of disciplinary action:

1. a letter of reprimand;
2. suspension of membership or Candidate Status for a certain period, or until a specified action is taken by the Member or Candidate;
3. expulsion from membership or candidacy;
4. payment of a fine to the Institute;
5. payment of an amount fixed by the Panel which approximates the cost borne by the Institute for the Hearing;
6. attendance and successful completion of an Institute course or courses, or any other educational program deemed appropriate; or
7. publication of the decision.

## **XIII Procedure for Appeal:**

1. The decision of the Committee may be appealed, by the person charged, by filing with the Committee Liaison within thirty (30) days of the date of mailing of the notice of the Committee's decision, the following:
  - a) a Notice of Appeal in writing, including a concise statement of the grounds for the Appeal; and
  - b) a filing fee of \$300.00 payable to the Institute.

If the decision of the Committee is appealed, the complaint will proceed to a Hearing Panel.

2. The decision of the Hearing Panel may be appealed, by the person charged, by filing with the Committee Liaison within thirty (30) days of the date of mailing of the notice of the Hearing Panel's decision, the following:

- a) a Notice of Appeal in writing, including a concise statement of the grounds for the Appeal; and
- b) a filing fee of \$500.00 payable to the Institute.

**XIV Duties and Composition of Professional Standards Appeal Board:**

1. The Appeal Board will consist of three (3) Members of the Institute who are not Members of the Professional Standards Committee, the Board of Directors or the Hearing Panel, but who hold the same designation as the Member appealing the Hearing Panel decision. The Chair and Members of the Appeal Board will be appointed by the President and will serve until a written decision is rendered. Any vacancies occurring will be filled by appointment by the President in office at the time the vacancy occurs.
2. The Appeal Board will not consider any new evidence, unless for good cause shown. The Appeal is to be decided solely on the evidence contained in the Hearing Panel Record.
3. The Hearing Record will contain:
  - a) the written Charge;
  - b) the written reply (if any);
  - c) all notices sent to the parties;
  - d) the transcript or other summary of the proceedings of the Hearing Panel (including any tape recordings of those proceedings);
  - e) all exhibits submitted as evidence at the Hearing;
  - f) the full decision of the Hearing Panel.

**XV Procedures for the Appeal Hearing:**

1. The Committee Liaison will deliver to the appellant by courier, registered mail, or other method requiring a signed receipt of delivery, a notice of the date, time, and place set for the Appeal Hearing, following confirmation of the date with the Members of the Appeal Board. This notice will be received at least thirty (30) days before the date of the Appeal Hearing. If the appellant fails to appear at the Appeal Hearing, either personally or by a representative, the Appeal will be dismissed.
2. The Appeal Board may:

- a) dismiss the Appeal and confirm the decision of the Hearing Panel;
  - b) amend the decision of the Hearing Panel as the Appeal Board deems appropriate; or
  - c) direct a Second Hearing to take place before a new Hearing Panel.
3. If a majority decision cannot be reached, then the President will appoint a new Appeal Board to hear the Appeal.
4. The decision of the Appeal Board will:
- a) be in writing;
  - b) be signed by the Chair of the Appeal Board;
  - c) specify the Appeal Board's disposition of the Appeal;
  - d) be directed to the Chair of the Professional Standards Committee and delivered to the Committee Liaison;
  - e) be delivered by the Committee Liaison by courier, registered mail, or other method requiring a signed receipt of delivery, to the person charged; and
  - f) be presented to the Board of Directors by the Chair of the Professional Standards Committee or designee, during an in camera session and without revealing the name of the person charged, at the next scheduled meeting, except if the Appeal Board decision is to order a Second Hearing, in which case the decision of the Second Hearing will be presented to the Board of Directors as set out in Sections XI 1 and XI 2.

## **XVI Special Considerations - Appeal Board:**

1. The Appeal Board will be the sole judge of all matters that come before it and may adopt such procedures and rules, not inconsistent with the Bylaws and Rules and Regulations of the Institute, as may be necessary for it to carry out its responsibilities.
2. Legal counsel for the Institute may serve as an Advisor to the Appeal Board. The Executive Vice President or Committee Liaison will serve as secretary to the Appeal Board.
3. The decision of the Appeal Board may not be appealed and is subject only to approval by the Board of Directors and notification, as provided for in Sections X 3. and X 4.
4. If the Appeal Board directs that a Second Hearing be conducted with a new Hearing Panel, the decision of the Second Hearing Panel may not be appealed and is subject only to approval by the Board of Directors and notification, as provided for in Sections X 3. and X 4.
5. If the Board of Directors orders a new Hearing, then the decision of that Hearing may be appealed in accordance with the procedures in Section 12.
6. The Appeal Board will render its decision as soon as possible but not more than twenty-one (21) days after the completion of the Appeal Hearing.

## **XVII General Matters:**

### **1. Receipt of Notices:**

Any Notices referenced in these proceedings will be deemed to have been received ninety-six (96) hours following the sending of such Notices by courier, registered mail, or other method requiring a signed receipt of delivery, to the address of the Member shown on the Institute's records.

### **2. Failure to Comply:**

If a Member fails to comply with a final decision approved by the Board of Directors in a professional standards case, his or her membership may be terminated by the Board of Directors at the next meeting.

### **3. Confidentiality:**

All files, documents, information and records relating to any complaint discussed at a meeting of the Board of Directors, the Professional Standards Committee, a Hearing Panel, an Appeal or at any stage of an investigation by a Researcher or any other individual, will be confidential and will not be discussed with nor be subject to access

by any other person who is not a party to the proceedings, other than the Executive Vice President or Committee Liaison, or if required by law. The complainant and party complained of are, however, not restricted from discussing the matter with persons of their choice.

## **APPENDIX I DUAL AGENCY/SINGLE AGENCY/BUYER BROKERAGE**

Changing environments often lead to changes in business practice. Economies change, governments change, the law changes. Why wouldn't we change the way we do business?

Usually, the changes in the way we practice our vocation are evolutionary, not revolutionary. We have the luxury of gathering information, studying that information, proposing alternatives, choosing one of the alternatives, implementing the choice, evaluating the effects of implementation, and abandoning or fine tuning the method, depending on the outcome. As consumers become more sophisticated, and as trends emerge, we should take stock and vary our policies and procedures to stay current, competitive and out of trouble. A trend has occurred in the United States that is starting to show up in Canada - Buyer Brokerage. Some will say "That's not new!" and they'd be right. Agency has always been permitted with either the buyer or the seller. In fact, in IC&I (industrial, commercial and investment) real estate, it is often the Buyer who is the "client" of the real estate broker.

Over the years, a typical residential real estate transaction has been based on a listing contract with the seller (the client). The listing is then shown to prospects (third parties - customers) and hopefully an offer drafted and accepted. Here the agent is offering client services to one side of the transaction, and customer services to the other.

That is the way **we** have seen it anyway. However, if you were to ask buyers about the relationship with the broker/sales person, many would think that they were represented by the broker. They think they are the client. In fact, a survey done in the United States showed that 72% of buyers surveyed thought that the real estate broker was their agent - even though they had no written contract with the broker or sales representative, nor were they paying them directly.

As in anything else, a perception often becomes the reality. Court cases in the United States and in Canada have helped confirm the belief that perhaps brokers are in fact establishing an agent/principal relationship with the buyer, just because of the way they conduct themselves with the buyers. This does not mean we have to change the way that we do business dramatically. However, it does give pause for reflection. In order not to be seen as representing **BOTH** sides to a transaction, we should advise each side what we are offering them in terms of service.

It is not that we have to stop doing what we have always done, it's just that we should start to better explain what it is we are doing so that 72% of our customers don't think they are clients when they are not. This does not necessitate an onerous three page legal document that might tend to scare away legitimate customers or clients. But we should look at the way we advise our clients and customers, what it is we do for them, and what our relationship with them actually is. Simple but routine disclosure might keep us out of trouble and keep legislators from meddling, be it ever so well-intentioned, in our business affairs.

**CREA'S (Canadian Real Estate Association) POSITION (May/95):**

CREA's position is simple:

- 1) CREA believes real estate brokers and sales associates can work for one consumer in a real estate transaction, and with another consumer in the same real estate transaction, by offering one individual client services and the other individual customer services, without being in a conflict of interest position.
- 2) CREA does not believe that the practice of real estate throughout the country should become adversarial in nature as is sometimes the case in the legal vocation. Realtors provide a valuable and distinct service to both sides of a real estate transaction, in satisfying the needs of two consumers, helping them both achieve their objectives, which is a trade in real estate.
- 3) CREA believes that all agents and sub-agents should disclose in writing exactly what services are being offered and performed for each party to a transaction, and should ensure that each party understands the relationship
- 4) CREA believes that in an MLS (Multiple Listing Service) transaction there should be written agency created with any co-operating broker and sales associate working on an MLS Listing. This relationship should not be confusing to anyone not in the business; therefore it is disclosed in full to all parties.
- 5) CREA believes that it is legally possible to establish a formal Dual Agency relationship in a real estate transaction (where one agent represents both sides to the transaction, each as a principal or client), but that the obligations and legal ramifications are so onerous that it is not a recommended real estate business practice.
- 6) CREA believes that its Members might unknowingly be practising Dual Agency because of their business methods and wants to ensure that Members don't get caught in the unintended Dual Agency trap which can be easily avoided.

#### **GIVENS:**

- 1) Whereas **Agency** is understood to mean "that relationship between principal and agent which arises out of a contract, either expressed or implied, written or oral, wherein an agent is authorised by a principal to do certain acts on his behalf in dealing with a third party".
- 2) Whereas **Sub-Agency** is understood to mean "that relationship whereby a person is empowered by an agent to act on behalf of the principal or on behalf of the agent, if not properly authorised by the principal. By custom, most sellers authorise the listing broker to appoint its sales staff to act on behalf of the seller, as sub-agents. Listing contracts often authorise the listing broker to appoint outside brokers as sub-agents, including other Members of the MLS. The principal who authorises the use of sub-agents may be bound by the acts and representations of such sub-agents of the seller's agent. The sub-agents'

misrepresentations to the buyer can be asserted by the buyer against the seller. The sub-agent owes fiduciary duties to the agent and to the principal".

- 3) Whereas **Seller Agency** is understood to mean "the relationship whereby the real estate agent represents the seller on a client basis and treats the buyer as a customer. The seller's broker is free to work with the buyer, provided the buyer understands that the broker is not acting in a representative capacity; that is, the buyer must understand that he or she is a customer receiving various services from the broker, who is acting on behalf of the seller.
- 4) Whereas **Buyer Agency** is understood to mean "the relationship established when a real estate broker is employed by and represents only the buyer in a real estate transaction, regardless of whether the commission is paid by the buyer directly or by the seller through a commission split with the listing broker. Buyer Brokerage is one part of a single agency real estate practice."
- 5) Whereas **Dual Agency** can be full or limited:
  - a) Full Dual Agency is understood to mean "the practice by which the same broker works as an agent for both the buyer and the seller in the same real estate transaction. As a rule of Agency Law, Dual Agency is not legally prohibited, provided both parties give their informed consent to this common and limited representation, and no information is kept confidential by the agent between parties.
  - b) Limited Dual Agency, as in dual agency, except certain information is restricted and confidential.
- 6) Whereas **Unintended Dual Agency** is understood to mean "accidental representation of both the buyer and the seller by the same broker. This is especially prevalent when the broker does not declare and the principal does not affirm the agency status of the broker".
- 7) Whereas REIC believes that, although Dual Agency is legal, in actual practice, it is difficult to achieve the necessary "knowing consent" of both the buyer and the seller to the transaction. It is also difficult to balance the needs of the buyer and the seller without inadvertently favouring one over the other.

#### **THEREFORE:**

- 1) REIC recommends that its Members avoid unintended Dual Agency as a business practice and urges that any Members practising intended Dual Agency do so knowing full well the legal ramifications and potential pitfalls that accompany such practice. Members shall fully disclose to all parties to a transaction the relationship of the Member to that party and the services that will be rendered as a result of that relationship.

- 2) REIC encourages its Members to engage in Single Agency relationships, either on behalf of the seller or the buyer, and that Members disclose to all parties involved, including co-operating brokers, the principal for whom they have accepted Agency.
- 3) REIC recommends that any disclosure concerning the relationship between the Member and the client or customer must be in writing and acknowledged and kept on file to clarify any confusion at some later date.
- 4) REIC will develop materials for use by Members to clarify the position they wish to adopt with clients and customers and co-operating brokers. Said material will include standard forms, suggested standard clauses, and office policy and procedure recommendations.

### **DISCLOSURE:**

With respect to disclosure, it is important to remember that:

1. Full disclosure to and consent by both parties is required by law to act as an agent or sub-agent to both parties in a transaction (dual agency).
2. Full disclosure to and consent by the customer (i.e. the buyer) is required if the Member intends to provide customer services while remaining the single agent of the client (i.e. the seller).
3. Full disclosure to and consent by the seller is required if the Member intends to provide client services to the buyer (i.e. be the single agent of the buyer - "buyer brokerage") and specifically not establish an agency or sub-agency relationship with the seller or the seller's broker.

### **AVOIDANCE OF AN UNINTENTIONAL AGENCY RELATIONSHIP WITH BUYER:**

A real estate agent approached by a prospective buyer for advice must take care not to enter into a "consensual relationship of trust" with that buyer. This can be prevented by giving the buyer notice in writing that:

1.
  - a) the Member is an agent of all sellers who have listed their property on MLS;
  - b) such sellers are therefore the Member's clients;
  - c) the Member must act in the best interests of such sellers;
  - d) the Member cannot withhold from the seller any relevant information (Article 3);
  - e) the Member must hold in confidence all information provided in confidence by the principal (Article 11); and

f) make all necessary disclosures as are required from time to time;

**OR**

- 2 a) the Member will be the agent of the buyer and act for the buyer;
- b) the Member must hold in confidence all information provided in confidence by the principal (Article 11); and
- c) make all necessary disclosures as are required from time to time.

**CONCLUSION:**

It is the opinion of REIC that the membership should not fear disclosure. If there is a concern that disclosure will cause problems in dealing with buyers and sellers, it is suggested that these concerns are more imagined than real. The majority of buyers are going to want and expect an agency relationship with a real estate representative.

**APPENDIX II**  
**COMMITTEES INVOLVED IN PROFESSIONAL STANDARDS CASES**

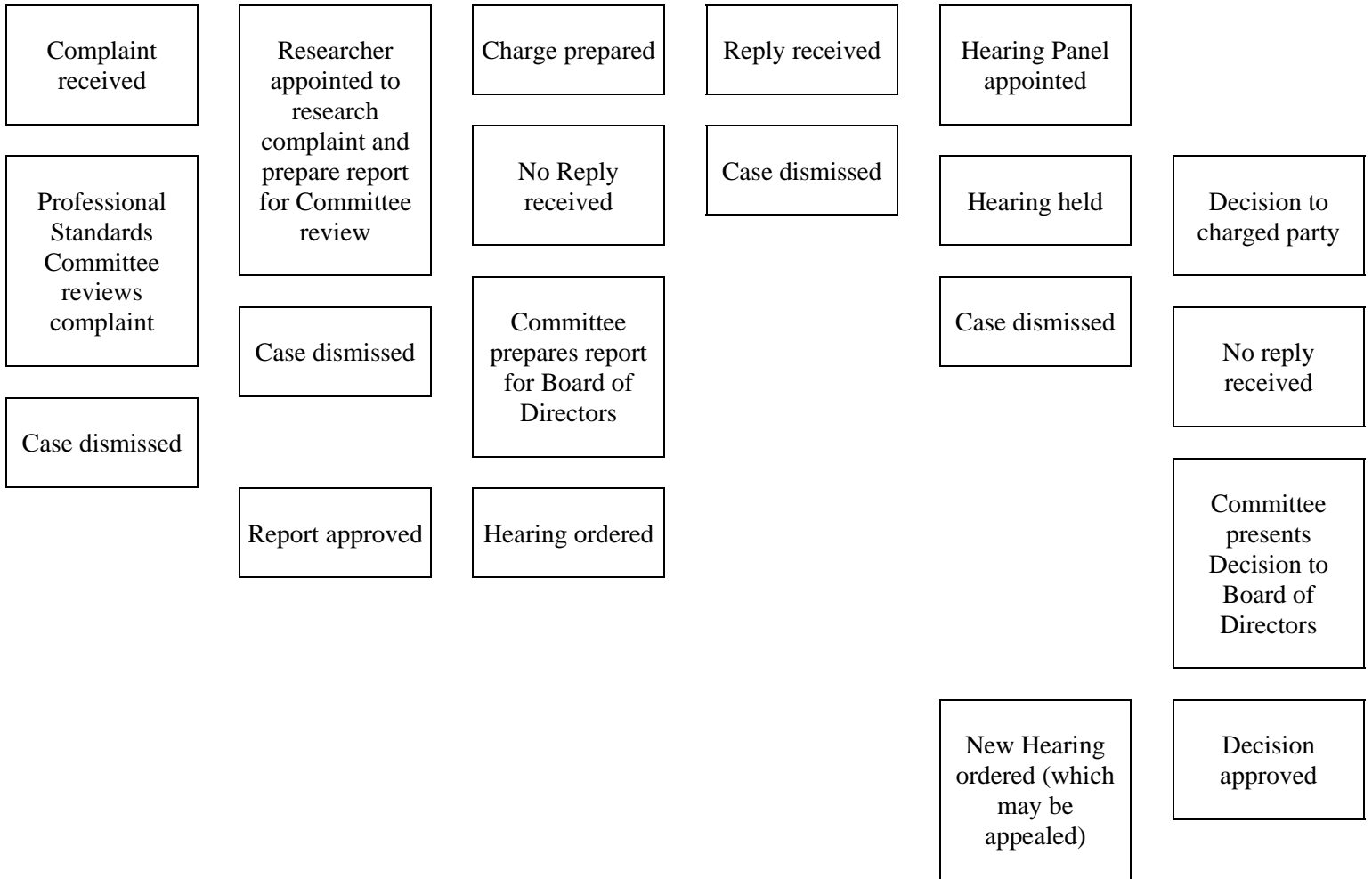
President appoints  
**CHAIR**  
of Professional Standards Committee

**PROFESSIONAL STANDARDS  
COMMITTEE**  
\*Not less than 3 Members  
\*One representing each Council  
\* Not members of the Board of Directors

**HEARING PANEL**  
\*Holding Appropriate Designation  
\*3 Members with no less than 3 years  
holding designation  
\*Not members of the Board of Directors or  
the Professional Standards Committee

**APPEAL BOARD**  
\*Holding appropriate designation  
\*3 Members with no less than 3 years  
holding designation  
\*Not members of the Board of Directors or  
the Professional Standards Committee

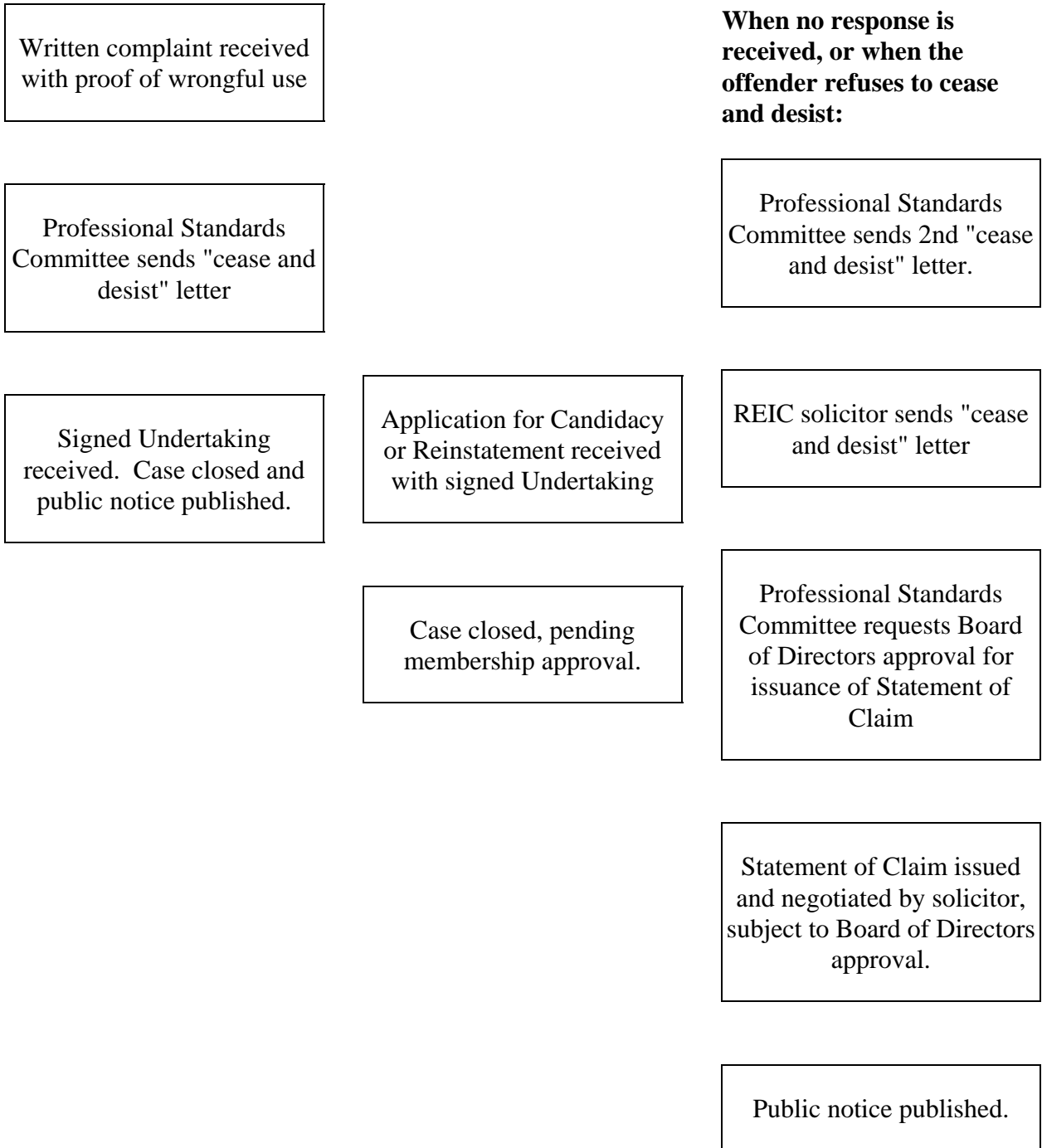
**APPENDIX III**  
**HEARING PROCEDURES FOR PROFESSIONAL STANDARDS CASES**



**APPENDIX IV  
DECISION OPTIONS - PROFESSIONAL STANDARDS CASES**

<b>Professional Standards Committee</b> receives or initiates complaint	No	Complaint is ended
	Yes	Appoints Researcher
<b>Researcher</b> investigates	No	Committee does not proceed
	Yes	Committee forwards case to Hearing panel (or recommends decision to Board of Directors)
<b>Hearing Panel</b> hears case	No	Case is dismissed
	Yes	Recommends decision to Board of Directors
<b>Person Charged</b> receives decision	No response	Decision goes to Board of Directors
	Appeals	Decision goes to Appeal Board
<b>Appeal Board</b> hears Appeal	No	Case dismissed
	Yes	Decision upheld (goes to Board of Directors), or Amendment to decision (goes to Board of Directors), or Second Hearing (with no appeal)
<b>Board of Directors</b> receives decision of Hearing or Appeal or Second Hearing	No	Case dismissed
	Yes	Decision upheld, or Call for New Hearing (with right of appeal)

**APPENDIX V  
PROCEDURES FOR UNAUTHORISED USE CASES**



## **APPENDIX VI REFERENCES TO PROFESSIONAL STANDARDS IN THE BYLAWS**

**NOTE:**        *Numerical references refer to Sections of Bylaw 04-1 with all amendments up to and including June 2004.*

### **MEMBERSHIP - DISCIPLINE:**

The Board of Directors may revoke or suspend the membership of, or otherwise discipline, any member, Active or Affiliate, including Honorary, Life, Emeritus, Non-active and Lifetime members, members on medical/compassionate leave, and Subscriber status if he breaches any of the Bylaws, Rules and Regulations or Professional Standards of the Corporation in effect from time to time [Ref. 3.8(b)]

### **STANDING COMMITTEES - PROFESSIONAL STANDARDS COMMITTEE**

The standing committees of the Corporation are named in Section 16.1 of the Rules and Regulations.

The President shall recommend Committee Chairs for Board approval in accordance with the Rules and Regulations of the Institute. The other members of each standing committee shall be appointed by the Chair of each committee, in consultation with the President, provided always that the Bylaws, Rules and Regulations Committee, the Professional Standards Committee, the Finance Committee, the Admissions Committee, the Membership Services Committee, the Planning Committee and the Education Committee shall each have members who together represent the Real Estate Sales & Leasing Council, the IREM Canada Council and the Real Estate Finance Council.

In the event that the Chair of the committee and the relevant Council Chair decide that a Council need not be represented, the Chair of the Committee shall defer all matters uniquely affecting the Council to its Directorate for response in writing.

Any Standing Committee member may be removed by a majority vote of the Board of Directors. [Ref. 11.1]

### **CONDUCT OF MEETINGS:**

In the event that there is an equality of votes on any matter brought before the Board of Directors, any committee of the Corporation or any meeting of the members of the Corporation, the Chair of the meeting shall only be entitled to one vote. Where not inconsistent with the Letters Patent or Bylaws of the Corporation, the conduct of all such meetings shall be governed by Robert's Rules of Order. [Ref. 23]

## **APPENDIX VII REFERENCES TO PROFESSIONAL STANDARDS IN THE REIC RULES & REGULATIONS**

*Note: Numerical references refer to Sections of REIC Rules and Regulations with all amendments up to and including February 2003.*

### **GOVERNMENT:**

REIC members and candidates shall be governed by the Bylaws, Rules and Regulations and the Code of Professional Standards of the Corporation and the current formal agreements the Corporation may have with other professional real estate organisations. [Ref. 1.1]

### **DESIGNATIONS AND ACCREDITATIONS:**

The FRI designation may be awarded to an individual who has received the approval of the Board of Directors, on the recommendation of the Real Estate Sales and Leasing Council Directorate and the Admissions Committee, and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full and has signed an irrevocable waiver of claim against the Corporation and particularly as to its or their acts in granting or failing to grant the applicant admission as an active member or disciplining him as a member in accordance with the Bylaws, Rules and Regulations, the Code of Professional Standards of the Corporation, and the Code of Ethics and Standards of Business Practice of the Canadian Real Estate Association; [Ref. 6.1(b)]

The FRI(E) designation may be awarded to an individual who has received the approval of the Board of Directors, on the recommendation of the Real Estate Sales and Leasing Council Directorate and the Admissions Committee, and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full, and has signed an irrevocable waiver of claim against the Corporation, and particularly as to its or their acts in granting, or failing to grant, the applicant admission as an active member or disciplining him as a member in accordance with the Bylaws, Rules and Regulations, the Code of Professional Standards of the Corporation [Ref. 6.2(b)];

The FRI(A) accreditation may be awarded to an active FRI Member who has received the approval of the Board of Directors, on the recommendation of the Real Estate Sales and Leasing Council Directorate and the Admissions Committee, and who has agreed to abide by the Code of Professional Ethics, the Uniform Standards of Professional Appraisal Practice (USPAP), and the Standards of Sound Business and Financial Practices of the Canadian Deposit Insurance Company (CDIC), and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full and has signed an irrevocable waiver of claim against the Corporation, and particularly as to its or their acts in granting or failing to grant the applicant admission as an active member or disciplining him as a member in accordance with the Bylaws, Rules and Regulations, and the Code of Professional Standards of the Corporation [Ref. 6.7(b) and (d)];

The CLO designation may be awarded to an individual who has received the approval of the Board of Directors, on the recommendation of the Real Estate Sales and Leasing Council Directorate and the Admissions Committee, and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full and has signed an irrevocable waiver of claim against the Corporation, and particularly as to its or their acts in granting or failing to grant the applicant admission as an active member or disciplining him as a member in accordance with the Bylaws, Rules and Regulations, and the Code of Professional Standards of the Corporation [Ref. 6.3(b)];

The CRES designation may be awarded to an individual who has received the approval of the Board of Directors, on the recommendation of the Real Estate Sales and Leasing Council Directorate and the Admissions Committee, and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full and has signed an irrevocable waiver of claim against the Corporation and particularly as to its or their acts in granting or failing to grant the applicant admission as an active member or disciplining him as a member in accordance with the Bylaws, Rules and Regulations, the Code of Professional Standards of the Corporation and the Code of Ethics and Standards of Business Practice of the Canadian Real Estate Association [Ref. 6.6(b)];

The CPM<sup>®</sup> designation may be awarded to an individual who has received the approval of the Board of Directors, on the recommendation of the IREM Canada Council Directorate and the Admissions Committee, and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full and has signed an irrevocable waiver of claim against the Corporation and IREM, and particularly as to its or their acts in granting, or failing to grant, the applicant admission as an active member or disciplining him as a member in accordance with the Bylaws, Rules and Regulations, the Code of Professional Standards of the Corporation, and the Code of Professional Ethics of the Institute of Real Estate Management [Ref. 6.4(b)];

The ARM<sup>®</sup> designation may be awarded to an individual who has received the approval of the Board of Directors, on the recommendation of the IREM Canada Council Directorate and the Admissions Committee, and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full and has signed an irrevocable waiver of claim against the Corporation and IREM, and particularly as to its or their acts in granting, or failing to grant, the applicant admission as an active member or disciplining him as a member in accordance with the Bylaws, Rules and Regulations, the Code of Professional Standards of the Corporation, and the Code of Professional Ethics of the Institute of Real Estate Management [Ref. 6.8(b)];

The CRF designation may be awarded to an individual who has received the approval of the Board of Directors, on the recommendation of the Real Estate Finance Council Directorate and the Admissions Committee, and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full and has signed an irrevocable waiver of claim against the Corporation and particularly as to its or their acts in granting or failing to grant the applicant admission as an active member or disciplining him as a

member in accordance with the Bylaws, Rules and Regulations, and the Code of Professional Standards of the Corporation [Ref. 6.5(b)];

The CRU designation may be awarded to an individual who has received the approval of the Board of Directors, on the recommendation of the Real Estate Finance Council Directorate and the Admissions Committee, and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full and has signed an irrevocable waiver of claim against the Corporation and particularly as to its or their acts in granting or failing to grant the applicant admission as an active member or disciplining him as a member in accordance with the Bylaws, Rules and Regulations, and the Code of Professional Standards of the Corporation[Ref. 6.9(b)];

The CRP designation may be awarded to an individual who has received the approval of the Board of Directors, on the recommendation of the Real Estate Finance Council Directorate and the Admissions Committee, and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full and has signed an irrevocable waiver of claim against the Corporation and particularly as to its or their acts in granting or failing to grant the applicant admission as an active member or disciplining him as a member in accordance with the Bylaws, Rules and Regulations, and the Code of Professional Standards of the Corporation[Ref. 6.10(b)];

The ARP designation may be awarded to an individual who has received the approval of the Board of Directors, on the recommendation of the Real Estate Finance Council Directorate and the Admissions Committee, and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full and has signed an irrevocable waiver of claim against the Corporation and particularly as to its or their acts in granting or failing to grant the applicant admission as an active member or disciplining him as a member in accordance with the Bylaws, Rules and Regulations, and the Code of Professional Standards of the Corporation[Ref. 6.11(b)];

The CMOC designation may be awarded to an individual who has received the approval of the Board of Directors, on the recommendation of the Real Estate Finance Council Directorate and the Admissions Committee, and who has completed and filed with the Executive Vice-President forms prescribed by the Corporation giving the detailed information requested therein in full and has signed an irrevocable waiver of claim against the Corporation and particularly as to its or their acts in granting or failing to grant the applicant admission as an active member or disciplining him as a member in accordance with the Bylaws, Rules and Regulations, and the Code of Professional Standards of the Corporation [Ref. 6.12(b)].

## **USE OF DESIGNATIONS, ACCREDITATIONS AND EMBLEMS:**

Such emblem, when adopted, shall be used in such manner as the Board of Directors may prescribe. The right of the member or individual to the use of the emblem may be revoked by the Board of Directors for any violation of the Bylaws, Rules and Regulations, or Code of Professional Standards of the Corporation. In the event of such revocation, certificates, pins and other documents which are the property of the Corporation and on which the emblem is shown, shall be returned to the Corporation. [Ref. 3.2]

A Member may use an awarded designation, accreditation or status in conjunction with his name and signature. The use shall be dignified and satisfactory to the Board of Directors, and shall comply with the Code of Professional Standards of the Corporation, the Bylaws, the Rules and Regulations, and with the objectives of the Corporation. [Ref. 10.1]

A Member awarded a designation, accreditation or status may wear the official emblem of the designation, accreditation or status, which may be presented to the member or individual upon the awarding of the designation, accreditation or status. The Council may use a reproduction of the emblem on its publications and printed matter, provided such use shall comply with the Bylaws, Rules and Regulations and the Code of Professional Standards of the Corporation. [Ref. 10.2]

## **COMMITTEE MEETINGS:**

Regular committee meetings, with the exception of the Nominating Committees, the Finance Committee and from time to time, the Professional Standards Committee, shall be open to all members of the Corporation, who shall not be entitled to vote or address the committee proceedings. [Ref. 16.5]

## **CHAPTER RESPONSIBILITIES:**

Regular committee meetings, with the exception of the Nominating Committees, the Finance Committee and from time to time, the Professional Standards Committee, shall be open to all members of the Corporation, who shall not be entitled to vote or address the committee proceedings.; [Ref. 17.1(e)]

The Chapter shall act in accordance with the Corporation's Bylaws, Rules and Regulations, policies, and the Code of Professional Standards; [Ref. 17.1(f)]

## **COUNCIL RESPONSIBILITIES:**

The Council Directorates shall consider matters relating to education, admission requirements, professional standards, member recruitment and retention, and any other such matters which affect their respective Councils. [Ref. 18]

## **AMENDMENTS TO THE CODE OF PROFESSIONAL STANDARDS:**

The Board of Directors shall establish and may from time to time, amend the Code of Professional Standards for the Corporation. [Ref. 21.1]

All Chapters shall adopt and comply with the Code of Professional Standards and Rules and Regulations and none shall be adopted which, in the opinion of the Board of Directors, do not comply with the Code of Professional Standards. [Ref. 21.2]