

Protocol for
Transnational Referrals and Dispute Resolution
Approved by ICREA Executive Committee 5-13-2002

THE FOLLOWING PROTOCOL, made pursuant to Article IV (3) of the Agreement Creating an International Consortium of Real Estate Associations (“the Consortium Agreement”), was duly approved as an annex to the said Consortium Agreement by a majority of the Member Associations of the Consortium on _____, 2002:

1. Definitions.

Days: Where the term “days” is used in this Protocol, it means calendar days.

Constituent shall mean an individual or business entity that (a) is actively engaged in the real estate business; (b) is a member of a Member Association; and (c) voluntarily and affirmatively agrees to adhere to the terms, rules, and standards specified in this Protocol Agreement.

Endorsing Association shall mean a Member Association that has endorsed this Protocol.

Member Association shall mean a professional real estate association that is a signatory to the “Agreement Creating an International Consortium of Real Estate Associations”

2. To Whom These Standards and Procedures Apply. The terms of this Protocol shall apply to any Constituent of an Endorsing Association who either: (a) refers a buyer or seller or a lessee or lessor to a Constituent of another Endorsing Association or (b) receives a referral of a buyer or seller or lessee or lessor from a Constituent of another Endorsing Association, under a formal contract involving a contingent promise to pay a referral fee. Said transnational referrals may be for purposes of buying, leasing, selling, managing, or appraising a property, or related consultancy services.

3. Form of Referral Contract. To be enforceable pursuant to this Protocol the referral contract shall consist of a duly authenticated ICREA E-transaction form as provided by ICREA and authenticated by the ICREA Site Operator.

4. Binding Nature of These Standards and Procedures. The terms of this Protocol shall govern all referral contracts as described in paragraphs 2 and 3 above between Constituents of Endorsing Associations, unless and to the extent that the terms of any referral contract may specify otherwise.

5. Duty to Keep Informed. Each party shall keep the other informed of all relevant facts and developments, including, the entry into contracts of purchase and/or lease, and closing.

6. Referral Fees. All referral fees must be agreed to in advance and confirmed in writing and electronically by means of the ICREA referral contract. Unless otherwise specified in the referral contract, a referral fee is earned by a referring party upon the closing of a transaction with the referred client in which the receiving party has an enforceable legal entitlement to a commission, provided there are no applicable laws which prohibit the payment of said referral fee. Said referral fee is due and payable by the receiving party immediately upon receipt of all or part of the commission. The amount of the said referral fee shall be that specified in the referral contract and may be subject to withholding tax in the country in which the transaction takes place.

7. Other Contract Terms and Contract Modifications. Claims for reimbursements of expenses by any party to an ICREA referral contract, to be enforceable, must be based upon the express terms of the referral contract. Any modification of the original referral contract, to be enforceable, must be reflected in a formal amendment executed by both parties and authenticated in the manner described at 3 above.

8. Enforcement of Referral Contract Entitlements

A. Authority

Every Constituent, by executing the standard ICREA E-Transaction Referral contract, agrees to submit to arbitration pursuant to this Protocol any dispute with another Constituent arising out of their resulting referral relationship. Further, all Constituents agree to be bound by and to pay within thirty (30) days all awards rendered by ICREA's duly appointed arbitrators.

B. Arbitrators

ICREA will establish a pool of arbitrators and make information about them available on the password protected part of the ICREA website. Not later than thirty days following its endorsement of this Protocol, an Endorsing Association will submit to the ICREA Secretariat the names, qualifications and contact information (mailing address, phone, fax and e-mail) of at least three (3) arbitrators with a minimum of ten (10) years of real estate experience and demonstrated experience in arbitration. Additional arbitrators may be added to this pool at any time at the discretion of Endorsing Associations or when required to maintain the original minimum number of arbitrators. Information about arbitrators' training, professional expertise, dispute resolution experience or availability to serve as an arbitrator received by the Secretariat from the Endorsing Association will be available to Constituents on ICREA's website.

C. Initiating Arbitration

ICREA will develop the following set of standard forms and make them available to Constituents on the ICREA website: an arbitration request form, an arbitration response form, an arbitration briefing form and arbitration rebuttal form. Constituents can request arbitration with other Constituents by completing the arbitration request form electronically and submitting it to ICREA via the ICREA website. Requests will include a brief description of the dispute and must specify the amount in dispute or, alternatively, the basis on which the referral fee is to be calculated. The request must specify the requestor's agreement to be bound by the arbitrator's decision and must be signed by the requestor and by a principal in the requestor's firm if the requestor is not a principal. Requests for arbitration must be accompanied by a filing fee of U.S. \$500, which will be held by ICREA pending outcome of the arbitration. Filing fees must be made by electronic bank wire transfer to ICREA's Bank Account, net of bank charges. Constituents requesting arbitration may, at the time they submit their arbitration request to ICREA, challenge the seating of any potential arbitrator for cause.

Upon receipt of a properly filed arbitration request, ICREA will promptly advise the named respondent of the request and ask the respondent to complete and return the ICREA arbitration response form. The response must specify the respondent's agreement to be bound by the arbitrator's decision and must be signed by the respondent and by a principal of the respondent's firm if the respondent is not a principal. Arbitration responses must be accompanied by a filing fee of U.S. \$500, which will be held by ICREA pending outcome of the arbitration. Constituents responding to arbitration requests may, at the time of submitting their response to ICREA, challenge the seating of any potential arbitrator for cause.

D. Challenges:

There are no preemptive challenges and the basis for any challenge of an arbitrator must be clearly set forth. In the unlikely event that all potential ICREA arbitrators are challenged by the requestor or respondent, the Co-chairs of ICREA will rule on the challenges and appoint an arbitrator from those not successfully challenged. If unchallenged arbitrators are available, an arbitrator shall be appointed by the ICREA Secretariat. If all available arbitrators are successfully challenged, the Co-chairs may, at their discretion, appoint an alternative arbitrator, or alternatively, release the parties from their obligation to arbitrate. If an alternative arbitrator is selected, the procedure for challenge will be followed.

An arbitrator must refuse to accept any arbitration assignment where the arbitrator:

- a. has a business or personal relationship with any party involved in the matter in dispute,
- b. has a personal or business involvement/interest in the transaction, or
- c. is unable to deal expeditiously and equitably with the arbitration assignment either because of a lack of resources or business/personal time constraints.

E. Referring disputes to the arbitrator

After properly executed arbitration requests and responses (including the required deposits) are received by ICREA, an arbitrator will be appointed by the Executive Committee from those unchallenged or, alternatively, from those unsuccessfully challenged. The arbitrator will either be a resident of a country other than the countries of the requestor and the respondent or of a different nationality.

ICREA will promptly advise the parties of the name and electronic contact information for the arbitrator. ICREA will simultaneously provide the parties with the standard ICREA arbitration briefing form (limit ten [10] pages double spaced) which will be used for communicating with the arbitrator. Parties should also attach executed copies of the ICREA referral contract and the arbitration request or arbitration response forms to the arbitration briefing form prior to submission to the arbitrator. These documents do not count against the ten (10) page limit on arbitration briefing forms. Parties will use the arbitration briefing form to provide factual information and explain to the arbitrator why the requested award should – or should not – be made. Parties have thirty (30) days following receipt of the arbitration briefing form from ICREA to submit their completed arbitration briefing forms to the arbitrator. Attempts to provide information after the thirty (30) day period, or to provide it in any other form or format, will not be accepted or considered by the arbitrator.

After the arbitrator has received completed arbitration briefing forms from both parties, the arbitrator will provide copies of the requestor's to the respondent, and the respondent's to the requestor. Each party will then have an additional fourteen (14) days to file an rebuttal of not more than five (5) pages using the ICREA subsequent rebuttal form.

F. Failure to respond / Failure to submit the Arbitration Briefing Form

Failure or refusal of any respondent to file a response, submit the required filing fee, or to submit an arbitration briefing form within thirty (30) days does not diminish the authority of the arbitrator to make an enforceable award.

G. Awards

Arbitrators will make their awards promptly and in no case more than sixty (60) days after the deadline for submitting the arbitration briefing forms. Any failure of an arbitrator to make an award within sixty (60) days (including incapacity on the part of the arbitrator), shall not release the parties from their duty to arbitrate and ICREA, at its *sole* discretion, may appoint a different arbitrator to resolve the dispute. If where it becomes necessary for an arbitrator to be appointed, any deadline/s for making responses, submissions and/or rebuttals has passed, the award will be made based on such responses, submissions, and/or rebuttals already submitted in accordance with this Protocol. Where any of the deadlines has not passed, any newly appointed arbitrator shall set a new deadline, as appropriate, but only for receipt of the outstanding documents.

Arbitrators shall provide the award (if any) in written and electronic form to the parties and to ICREA electronically.

Where an award is made in the amount requested by the requestor, the filing fee of the party requesting arbitration will be returned. Where the award provides for no payment to the requestor, the respondent's filing fee will be returned. Where a partial award is made, the disposition of the filing fees will be determined by the arbitrator. Where the parties settle their dispute prior to commencement of the arbitrator's work, the parties' filing fees will be returned minus a \$100 administrative fee to be shared equally by both parties. Absent a reason deemed acceptable by a Co-chair of ICREA, awards must be paid within thirty (30) days after the award is transmitted to the parties.

H. Failure to pay awards

Absent a reason deemed acceptable by a Co-chair of ICREA, failure to pay an arbitration award within thirty (30) days will be reported to the respondent's national real estate organization and may result in termination of ICREA services to the respondent and to the respondent's firm, either by action of ICREA or, where required by law or regulation, by the respondent's national real estate organization. In addition, the respondent's real estate organization may impose additional penalties on the respondent if it is determined that the respondent has violated that organization's obligations of membership, including but not limited to, code of ethics. The names of Constituents failing to pay arbitration awards and the names of their firms will be published and made available to other Constituents and to Endorsing Associations on the private site of ICREA website for three (3) years. Failures to pay arbitration awards will also be reported to the respondent's state and local real estate associations, if applicable. Awards made pursuant to this Protocol shall be enforceable in a court of competent jurisdiction in the country where the property involved in the dispute is located.

9. Communication and Education

Endorsing Associations shall undertake to make their constituents aware of the ICREA Transnational Referral System and encourage its use through the various education and communication tools available to them.

THE UNDERSIGNED ASSOCIATIONS hereby accede to and endorse this Protocol, as evidenced by the signatures of their duly authorized representatives set forth herein below on the indicated dates:

[Association]

[Date]

[Authorized Signature]

[Association]

[Date]

[Authorized Signature]

[Association]

[Date]

[Authorized Signature]

[Association]

[Date]

[Authorized Signature]

[Association]

[Date]