CONSTRUCTION AND DESIGN REGULATORY AGENCIES

Contractors’ State License Board
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Created in 1929, the Contractors’ State License Board (CSLB) licenses contractors to work in California, handles consumer complaints, and enforces existing laws pertaining to contractors. A consumer protection agency within the Department of Consumer Affairs (DCA), CSLB is authorized pursuant to the Contractors’ State License Law (CSLL), Business and Professions Code section 7000 et seq.; the Board’s regulations are codified in Division 8, Title 16 of the California Code of Regulations (CCR). CSLB currently licenses over 273,000 contractors in California.

The thirteen-member Board consists of seven public members (one of whom must be an active building official), one general engineering contractor, two general building contractors, two specialty contractors, and one member from a labor organization representing building trades. The Board currently maintains five committees: executive, contractor and consumer education, enforcement, licensing, and legislation.

MAJOR PROJECTS

CSLB Centralizes Internal Complaint Handling Process in Southern California

At its January 26 meeting, CSLB approved Registrar Lance Barnett’s proposal to establish a southern California pilot project to re-engineer the way the Board receives, manages, and resolves complaints from consumers. The proposal will be implemented in phases in the Los Angeles area, then reviewed, monitored, and evaluated before expansion to other areas.

CRLR 107-08

CRLR 16:1

CRLR

Under Barnett’s proposal as introduced last fall, 15 of the Board’s district offices would be closed. In their place, CSLB would establish two centralized Intake-Mediation Centers and two centralized Investigation Centers across the state. The Board’s investigative staff would be expanded and equipped with mobile offices, including a laptop computer, modem, cellular phone, and fax machine. Complaints would come in through a toll-free number to a central office in Sacramento, where they would be triaged and downloaded daily to the appropriate field officer. The officer would then follow up on the complaint by phone and in person. CSLB funds currently spent on office rent throughout the state would be redirected to expanding the number of investigative personnel and equipping them with modern technology.

Although Board members agreed with the triage concept, they objected to the proposed closure of CSLB district offices, arguing that licensees and consumers prefer the convenience and familiarity of having access to CSLB via a local office. At CSLB’s November 1998 meeting, members refused to adopt the restructuring plan as part of the Board’s overall strategic plan. Several members voiced their intent to oppose any restructuring plan that includes closure of local offices. [16:1 CRLR 107-08] However, upon reconsideration at its January meeting, the Board acquiesced and approved staff’s proposal to implement a scaled-back version of the restructuring program as a pilot project initially covering the greater Los Angeles Basin.

Phase I of the project began on March 1 with the opening of CSLB’s first centralized Intake/Mediation Center in Buena Park, staffed by CSRs from the Board’s Azusa, Van Nuys, and Inglewood district offices. Simultaneously, the first centralized Investigation Center was created in Azusa, consisting of a consolidation of CSLB’s Van Nuys and Azusa offices. All complaints in the area are now received through the Buena Park office, where they are reviewed, prioritized, and assigned to mediation or forwarded to the Investigative Center for appropriate action.

Assistant Regional Deputy Paige Roush briefed the Board on the progress of the pilot project at its April 21 meeting. According to Roush, CSRs at the Intake/Mediation Center are using a newly-developed “triage checklist” to thoroughly review incoming complaints. The CSR checks the complaint form for completeness and gathers information on the complained-of contractor, including license status and disciplinary history. The technician also reviews the documents.
submitted with the complaint, and may contact the complaining consumer for additional documents or information. The CSR also screens each complaint for “triggers” which would require immediate forwarding of the complaint to the Investigation Center, including complaints about multiple/repeat offenders or licensees with ties to organized crime, possible fraudulent acts, complaints related to health and safety, and complaints concerning elderly victims. The CSRs enter this information on a standard report format, which is kept at the Intake/Mediation Center for complaints which will be mediated, or sent to the Investigative Center for complaints which require investigation.

According to Roush, the pilot program is enabling the Board to streamline its complaint handling process, improve the consistency and uniformity of decisions, and eliminate workload inequities between CSRs and deputys—all of which improves productivity, reduces the time it takes to process complaints, and increases consumer satisfaction.

At this writing, Phase II of the pilot project will commence on May 3, when CSRs from CSLB’s Long Beach and Santa Ana offices will report to the Buena Park Intake/Mediation Center. Phase III is scheduled for July 1, at which time the CSRs from the San Bernardino and Moreno Valley offices will report to Buena Park, and the Long Beach and San Bernardino offices will become regional Investigative Centers. Although the Moreno Valley and Santa Ana offices will be closed, CSLB will maintain satellite offices in Van Nuys and Inglewood. Another progress report on the pilot project is expected at CSLB’s July meeting.

**Staff Explores “Home Improvement Protection Plan” Proposals**

CSLB staff counsel Ellen Gallagher is in the process of researching a new initiative entitled the “Home Improvement Protection Plan” (HIPP), which consists of several related proposals intended to protect consumers who engage contractors in home improvement projects. HIPP is an outgrowth of the Board’s 1996-97 review by the Joint Legislative Sunset Review Committee (JLSRC). At that time, Board staff presented statistics indicating that the majority of financial injury and consumer complaints filed with CSLB are attributable to problems with home improvement contractors. Following the review, the JLSRC extended the existence of the Board for two years and instructed it to study several issues, including mechanisms to protect consumers from financial loss due to a contractor’s negligence, poor performance, or dishonesty.

Specifically, the JSRRC expressed concern that consumers are frequently unable to recover financially when a contractor bankrupts or absconds with their money without completing the contracted project. The current bonding requirement is only $7,500, which is typically gone before the consumer attempts recovery; according to the JLSRC, “surety bonds do not provide protection to consumers,” and “frequently, the homeowner’s only recourse is to sue in small claims court or file a civil action against the contractor.” Approximately 15 states maintain some type of recovery fund which may reimburse (in whole or in part) consumers who have been victimized by dishonest, incompetent, or bankrupt contractors. The JLSRC instructed the Board, and CSLB thereafter instructed Registrar Barnett, to investigate possible methods for providing consumers with a “safety net.” After the Board rejected Barnett’s proposal for creation of an industry-sponsored recovery fund in September 1998 [16:1 CRLR 107], Gallagher commenced work on a variety of proposals to protect consumers or better enable them to protect themselves.

One of the HIPP proposals is embodied in AB 1288 (Davis), which would require contractors to demonstrate to CSLB that they carry general liability insurance (GLI) in a minimum amount of $1 million as a condition of license renewal (see LEGISLATION). GLI would protect both the contractor and the homeowner if the contractor commits a negligent act which causes consequential damage to the homeowner’s property. If a contractor with adequate GLI coverage negligently damages a consumer’s property, the insurance will presumably cover the damages up to the limits of the policy. If a contractor without GLI negligently damages a homeowner’s property, the consumer has three “remedies”—the consumer may (1) sue the contractor (who likely has few assets and is judgment-proof; if the contractor had substantial assets, he/she would carry GLI to protect them), (2) file a claim against his/her own homeowners’ insurance policy (thus risking premium increases), or (3) pay out-of-pocket to repair the damage.

On January 21, CSLB conducted a public workshop on the proposed GLI requirement. The testimony revealed that GLI is aimed at protecting consumers from a different kind of harm (consequential damage from contractor negligence) than is addressed by either CSLB’s enforcement system or the existing bond requirement. When the contractor has neither assets nor GLI, the homeowner unknowingly carries all the risk of contractor-caused damage. While a homeowner who carries homeowner’s insurance can shift some of that risk to his/her insurance policy, the homeowner must cover any applicable deductible and runs the risk of increased premiums or outright cancellation. According to CSLB, GLI is available to most contractors; however, participants generally agreed that a small but significant portion of licensed contractors would be unable to obtain GLI, such that a “pool” or pool substitute would have to be created to ensure coverage of these contractors. As an alternative to requiring home improvement contractors to carry GLI, staff
may propose a requirement that contractors disclose to consumers whether they carry GLI. The Board plans to hold more hearings on this issue during the fall.

In addition to requiring home improvement contractors to carry GLI, staff is exploring other consumer protection proposals as alternatives to the recovery fund concept, including the following:

- The Association of California Surety Companies has suggested creation of a new “mini-performance bond” in the amount of $7,500. Home improvement contractors would be required to carry the new bond, which could be accessed only by homeowners.

- Staff is exploring a legislative proposal to create a 2%-per-month penalty on prime contractors who have been paid by the homeowner but fail to pay material suppliers and equipment renters; this proposal would provide these contractors with the same protection that subcontractors have under existing Business and Professions Code section 7108.5.

- Surety Company of the Pacific has proposed a more “user-friendly” mechanic’s lien warning which explains to consumers the dangers of mechanic’s liens, describes the limited authority of CSLB in this area, and describes methods of avoiding mechanic’s liens. In addition, Board staff is exploring legislation to improve the contents and quality of the required “preliminary notice” which must be provided to a homeowner 20 days prior to the filing of a mechanic’s lien, and to institute a new “five-day preliminary notice” in the single-family residential home setting.

- Staff is also developing legislation addressing a home improvement contractor’s failure to provide the notices required by the mechanic’s lien laws, and improving the contents of several of the required notices.

At this writing, CSLB staff plan to present the Board with an update on these proposals at its July meeting, and Gallagher plans to hold additional workshops on the HIPP proposals in October.

Board Debates “Substantial Relationship” Criteria on Criminal Convictions

Business and Professions Code sections 475 and 490 permit the Board to discipline or deny a contractor’s license if the licensee or applicant has been convicted of a crime which is “substantially related to the qualifications, functions, or duties” of a contractor. Section 868, Title 16 of the CCR, sets forth the kinds of crimes which are deemed “substantially related” for purposes of license denial or discipline; they include submitting false vouchers to obtain construction loan funds and not using the funds for the purpose for which the claim was submitted; willfully rebating to or on behalf of anyone contracting with a licensee any part of money tendered the licensee for the provision of services, labor, materials, or equipment; and theft of building materials or equipment for use on a construction project.

At a Licensing Committee roundtable meeting on April 1 and at CSLB’s April 21 meeting, Board staff discussed the potential expansion of section 868 as it applies to home improvement contractors and salespersons. Staff believes the section’s emphasis on construction-related offenses is too narrow, and seeks to define all felonies and other criminal acts involving fraud, misrepresentation, and/or dishonesty as “substantially related” to the duties of a contractor.

During discussion, some Board members made a “double jeopardy”-like argument, expressing the view that once a contractor has “paid his/her debt” for a crime, it is unfair for a licensing board to then withhold or discipline the license. Staff noted that the primary purpose of the Board is to protect consumers, including future consumers, from contractors who are negligent, dishonest, or dangerous. This purpose requires the Board to look beyond the immediate duties of a contractor to situations in which a contractor may find him/herself, and protect consumers from contractors who cannot handle themselves appropriately in those situations. Because home improvement contractors work within consumers’ personal residences and are exposed to the belongings of the consumer, excluding contractors who have committed crimes of moral turpitude may be in the best interest of consumers. Staff also noted that section 869, Title 16 of the CCR, which sets forth rehabilitation criteria, should be amended, and that the amount of time which has elapsed between the conviction and license application or renewal (and the presence or absence of subsequent bad acts during that time period) should be specified as a critical factor in determining whether a licensee with a criminal history has been rehabilitated. Due to the hesitance of the Board members, staff promised to study these issues further and raise them at a future meeting.

Board Amends Regulatory Restrictions on General Building Contractors

On April 21, CSLB adopted proposed amendments to section 834(b), Title 16 of the CCR, to conform it with recent amendments to Business and Professions Code section 7057.

Section 834(b) states that a licensee classified as a general building contractor “shall not take a prime contract (excluding framing or carpentry) unless it requires at least three unrelated building trades or crafts, or unless he/she holds the required specialty license(s).” In Home Depot, U.S.A., Inc. v. CSLB, 41 Cal. App. 4th 1592 (1996), the Fourth District Court of Appeal voided section 834(b) as being inconsistent with then-existing section 7057, which required that a general building contractor’s “principal contracting business” consist of projects which require the use of more than two
unrelated building trades or crafts. The court held that, unlike section 834(b), the statute (as then extant) "does not limit a general building contractor’s operation solely to contracts involving more than two unrelated building trades or crafts" (emphasis original).

In 1997, CSLB sponsored SB 857 (Polanco) (Chapter 812, Statutes of 1997) to amend section 7057 and modify the court's ruling. Section 7057 now specifies that a general building contractor may legally take a prime contract or subcontract that involves (1) framing or carpentry, or (2) at least two unrelated trades or crafts other than framing or carpentry (framing or carpentry may not be counted as one of the two unrelated trades or crafts). In other words, a general building contractor may not take a prime contract or subcontract involving fewer than two unrelated trades (other than framing or carpentry) unless the general building contractor holds the required specialty license. [16:1 CRLR 104-05; 15:4 CRLR 70-71]

The Board’s proposed amendments to section 834(b) would conform the regulation to amended section 7057. Specifically, section 834(b) would read: "A licensee classified as a general building contractor, as defined in section 7057 of the Code, shall take a prime contract or subcontract only as authorized by section 7057." At this writing, staff is preparing the rulemaking file on the proposed change for submission to DCA and the Office of Administrative Law.

Board Prepares for 1999 “Sunset Review”

During the fall of 1996, CSLB underwent its first “sunset review” by the Joint Legislative Sunset Review Committee. That review resulted in the passage of SB 857 (Polanco), which amended Business and Professions Code section 7000.5 and extended the existence of the Board until July 1, 2000. Under that deadline, the Board’s next sunset review hearing was scheduled for the fall of 1998, to enable the passage of extension legislation in 1999 (prior to the 2000 expiration date). However, due to the 1998 gubernatorial and legislative elections, the change in administrations, and the absence of appointed members on the JLSRC during 1998, a bill extending the life of the Board until July 1, 2001 is pending in the legislature (see LEGISLATION) and the Board’s sunset review hearing has been postponed to November 30, 1999.

Following its 1996 sunset review of the Board, the JLSRC instructed CSLB to study and report back on a number of specific issues, including the continued need for all of its specialty contractor classifications, an appropriate resolution to the Home Depot decision (see above), implementation of the home improvement contractor certification program under AB 1213 (Miller) (Chapter 888, Statutes of 1997), the establishment of a recovery fund and other “safety net” mechanisms to protect consumers from dishonest home improvement contractors (see above), and other specified issues. During 1998, the Board prepared a report responding to each of the issues identified by the JLSRC. [16:1 CRLR 104-07] At this writing, Board staff is preparing an updated report which includes 1999 actions on the issues identified by the Joint Committee. CSLB will submit the new report to the JLSRC by October 1, in time for its November 30 review hearing.

LEGISLATION

ACA 5 (Honda) and AB 742 (Honda) are two of several pending bills concerning “mechanic’s lien,” the current legal mechanism available to protect the interests of those who provide labor or materials toward the improvement of the property of others, known as “works of improvement” (see below for details on other bills relating to mechanic’s lien). Section 3 of Article 14 of the California Constitution provides that “mechanics, persons furnishing materials, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.” A mechanic’s lien is a claim against the real property on which the claimant has furnished labor or material, for the value of the labor done or material furnished. The lien gives the person who has furnished services, equipment, or material for a work of improvement a security interest in the improved real property that may be foreclosed upon if the claim is not paid. The major classifications of those who are entitled to a mechanic’s lien are contractors, subcontractors, material suppliers, artisans, and laborers. The lien must be recorded within the applicable time period specified by law, in the county in which the property is located. A contractor or material supplier is entitled to enforce a mechanic’s lien against property only if he/she has given preliminary notice in accordance with the mechanic’s lien law. Compliance with the preliminary notice provision is strictly enforced.

ACA 5 would create an exception to the constitutional mechanic’s lien provision where the property is a single-family, owner-occupied dwelling that is the primary residence of the owner of the property if the owner has paid in full, to the person to whom the owner is contractually obligated to make payment, the amount owed by the owner for the labor bestowed and material furnished upon that property that would form the basis for the claim of lien. ACA 5’s companion measure, AB 742, would prohibit non-prime contractors from recording a mechanic’s lien on such a dwelling where the owner has paid the prime contractor in full, and would enable non-contractors who have not been paid to seek compensation through a new industry-supported recovery fund.

According to the author, ACA 5 and AB 742 seek to end “the victimization of homeowners, subcontractors, material suppliers, and laborers by unscrupulous prime contractors.” The legislative analyses of these bills describe the steps of this problem as follows: The homeowner enters into a contract with a prime contractor for a home improvement project. The prime contractor hires laborers and subcontractors, and purchases supplies from a material supplier. Upon completion of the project, the homeowner pays the prime
lcontractor in full, but the prime contractor fails to pay the laborers, subcontractors, and material suppliers—who are now victims of the prime contractor’s breach of contract. Under current law, once the laborers, subcontractors, and materials suppliers have failed to be paid by the prime contractor, they have the right to collect from the homeowner via a mechanic’s lien. According to Assemblymember Honda, this right to collect from the homeowner makes sense when the homeowner has not paid the prime contractor. However, it makes no sense if the homeowner has paid the contractor in full. “It is important to recognize that the sole person at fault in this hypothetical is the unscrupulous prime contractor. There is no dispute that laborers, subcontractors, and material suppliers should be paid, but the homeowner shouldn’t be forced to pay twice.”

The challenge, according to Assemblymember Honda, is to design a carefully tailored solution which will protect innocent homeowners, laborers, subcontractors, and material suppliers. ACA 5 would exempt certain classes of homeowners from otherwise applicable mechanic’s lien liability, while AB 742 would create the Contractor’s Default Recovery Fund (CDRF), an industry-supported fund to pay laborers, subcontractors, and material suppliers. AB 742 would also prohibit those who provide labor, materials, or services to an owner-occupied residential work of improvement (home improvement) pursuant to a contract entered into on and after January 1, 2000 from recording a lien upon that real property for the value of that labor, materials, or services if the owner has paid the prime contractor in full pursuant to a contract between the owner and the prime contractor. Laborers, subcontractors, and material suppliers who are victimized by a prime contractor would seek payment from the CDRF, when the homeowner meet the conditions prescribed by ACA 5. [A. Jud; A. Floor]

**AB 1642 (Floyd),** as introduced March 4, provides that the failure of a contractor to pay moneys when due for materials purchased or services rendered in connection with his/her operations as a contractor for residential home improvement work, when he/she has the capacity to pay or has received funds for that particular project that were sufficient to pay for the services or materials, and if the failure to pay results in a mechanic’s lien being filed against residential property for that work, would result in the automatic suspension of the contractor’s license. This bill would require the Registrar of Contractors to notify the licensee of this suspension in writing, and permit the licensee to contest the suspension within 15 days after service of this notice by written notice to the Registrar. AB 1642 would also create a rebuttable presumption that the failure of a contractor to pay for any goods supplied or services rendered in connection with a contract, when he/she has received sufficient funds for that particular work, is a willful and deliberate violation. [A. CPGE&ED]

**AB 171 (Margett),** as amended April 5, would amend section 3258.5 of the Civil Code, which requires the owner of a work of public or private improvement to sign and verify any notice of completion or notice of cessation of work, and also requires that the notice be recorded in the office of the county recorder of the county in which the site is located. This bill would require the owner of a public or private work of improvement to notify, by registered or certified mail, the original contractor and any claimant who has provided a preliminary 20-day notice that a notice of completion or notice of cessation has been recorded, within ten days of recordation of that notice of completion or notice of cessation. Failure to give notice would extend the period of time in which the contractor or claimant may file a mechanic’s lien or stop notice to 90 days (which would be the sole liability incurred for failure to give notice). The bill would also define an “owner” for these purposes as a person who has an interest in real property, or his/her successor in interest, but would exclude a person who occupies the real property as his/her personal residence. [A. Jud]

**SB 1151 (Polanco),** as introduced February 26, would amend Business and Professions Code section 7081.5, which requires a licensed contractor—prior to entering into a contract with an owner for home improvement or swimming pool construction work—to provide a notice regarding the state’s mechanic’s lien laws to the owner, owner’s agent, or the payer. Failure to provide the notice would be grounds for disciplinary action. This bill would additionally require the contractor to obtain a written receipt indicating that the person has received and read the notice; require the receipt to be maintained for inspection; and make failure to provide the notice and obtain the receipt grounds for disciplinary action. [S. B&P]

**AB 1288 (Davis),** as introduced February 26, would require CSLB, on and after January 1, 2000, to require—as a condition precedent to the issuance, renewal, reinstatement, reactivation, or continued maintenance of a license—that an applicant or licensee file or have on file with the Board a certificate of liability insurance in the amount of $1,000,000 per occurrence. According to Assemblymember Davis, the purpose of AB 1288 is to ensure that contractors, rather than homeowners or others who engage contractors, have sufficient resources to compensate injured or aggrieved parties in the event of accidents connected with contracting jobs.

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factors that create a security interest in excess of $5,000 in the buyer’s property; or (d) the person is on a fixed income consisting of Social Security, supplemental security income, pensions with monthly payments, or any other source of income which provides the borrower with $1,500 or less a month. SB 99 would further require a seller to read and give written notice to all at-risk buyers advising the buyer that the contract payments. The notice must also advise the buyer that it is a misdemeanor to misrepresent a person’s financial information. The bill would require CSLB to promulgate regulations governing the program and to annually review the certification. The bill would require a California Home Construction Warranty to meet specified minimum standards and procedures; permit a participating home builder to issue a California Home Construction Warranty on new residential housing, including a home that is part of a common interest development, where the purchaser secures title on or after January 1, 1999; and provide that a California Home Construction Warranty applies for a minimum of ten years and is binding on subsequent purchasers during the term of the warranty. AB 1221 would also define the term “construction defects,” provide for binding arbitration of construction defect claims covered by the Warranty, and provide that if a homeowner elects by contract to purchase a home subject to a California Home Construction Warranty, the contractual provisions of that warranty shall be deemed to be the exclusive election of recourse by the homeowner and the participating homebuilder for the claims covered by the warranty. In other words, the parties to a California Home Construction Warranty would be deemed to waive tort remedies, including negligence, strict liability, implied warranties, fraud and intentional misrepresentation, and any other common law remedy other than for breach of warranty contract and the provisions therein. The waiver does not preclude or limit any right of action for bodily injury or wrongful death.

AB 1206 (Wesson), as amended April 27, would expand the definition of “contractor” to (and thus require CSLB to license) persons who engage in the preparation and removal of roadway construction zones, lane closures, or traffic diversions. AB 1221 (Dutra), as amended April 26, would express the legislature’s findings relating to a lack of construction of multifamily housing, including condominiums and townhouses, due to construction defect litigation, and declare that there is a substantial need for a highly effective, state-sanctioned, ten-year new home warranty program to provide both a process for resolving claims and a mechanism to ensure quality design and construction. AB 1221 would establish the California Homebuyer Protection and Quality Construction Act of 1999. The bill would permit a licensed contractor to apply to CSLB to be certified as a participating home builder, which would mean that the contractor could issue a California Home Construction Warranty. The bill would require CSLB to promulgate regulations governing the program and to annually review the certification.

The bill would require a California Home Construction Warranty to meet specified minimum standards and procedures; permit a participating home builder to issue a California Home Construction Warranty on new residential housing, including a home that is part of a common interest development, where the purchaser secures title on or after January 1, 1999; and provide that a California Home Construction Warranty applies for a minimum of ten years and is binding on subsequent purchasers during the term of the warranty. AB 1221 would also define the term “construction defects,” provide for binding arbitration of construction defect claims covered by the Warranty, and provide that if a homeowner elects by contract to purchase a home subject to a California Home Construction Warranty, the contractual provisions of that warranty shall be deemed to be the exclusive election of recourse by the homeowner and the participating homebuilder for the claims covered by the warranty. In other words, the parties to a California Home Construction Warranty would be deemed to waive tort remedies, including negligence, strict liability, implied warranties, fraud and intentional misrepresentation, and any other common law remedy other than for breach of warranty contract and the provisions therein. The waiver does not preclude or limit any right of action for bodily injury or wrongful death.

SB 187 (Hughes) and SB 99 (Hughes) are companion bills intended to reduce the incidence of home equity lending fraud by establishing procedures a seller must follow in certain retail installment sales contracts involving home improvements.

As amended March 18, SB 187 would prohibit the seller of a home improvement contract from taking a security interest (other than a mechanic’s lien) on the principal residence of a buyer who is 65 years of age or older. The bill would also impose civil remedies and penalties for violation of current Business and Professions Code provisions prohibiting a lender in a home improvement contract from making direct payments solely to the home improvement contractor.

As amended April 20, SB 99 would establish procedures that a seller must follow in certain retail installment contracts involving home improvements. Specifically, this bill—as it regards a retail installment sales contract for home improvements that creates a security interest in excess of $5,000 in the buyer’s real property—would require the seller to examine the buyer’s credit report and other financial information to determine whether the buyer is an “at-risk buyer,” defined as a person to whom any of the following factors applies: (a) a notice of default has been recorded within the last 24 months against the person’s property which is being offered as security for the sales contract; (b) the person has had a bankruptcy within the last 24 months; (c) two or more judgment liens of more than $1,000 have been filed against the property being offered for security; or (d) the person is on a fixed income consisting of Social Security, supplemental security income, pensions with monthly payments, or any other source of income which provides the borrower with $1,500 or less a month. SB 99 would further require a seller to read and give written notice to all at-risk buyers advising the buyer that the seller is relying on the buyer’s income and expenses statement as being true and correct, and that the buyer could lose his/her home in a foreclosure sale if the person fails to make the contract payments. The notice must also advise the buyer that it is a misdemeanor to misrepresent a person’s financial condition to obtain a property loan.

If the buyer is an at-risk buyer, the seller must also determine if the retail installment sales contract would be an at-risk loan, which exists where the sum of the monthly payment on the retail installment sales contract and the buyer’s total fixed monthly expenses exceeds 60% of the buyer’s effective gross income. To determine if the contract is an at-risk loan, the seller may rely on the buyer’s representation concerning
effective gross income, housing expenses, and other recurring charges unless there is a factual basis for not believing that the buyer's representations are true and correct.

If the transaction involves an at-risk buyer and an at-risk loan, the seller must then require the buyer to seek and obtain independent advice and counseling from a HUD-authorized counseling agency, a nonprofit neighborhood or community housing or community counseling service, or an attorney, before completing the sales loan. SB 99 would also specify that the sale may not be concluded until the seller receives a statement from the counselor stating that such counseling has been completed. Where the independent counselor confirms that there is an at-risk loan, the independent counselor must give and read to the buyer a notice that would advise the buyer that the proposed loan constitutes an at-risk loan, and that the home may be lost in a foreclosure sale if the person agrees to the loan. SB 99 would also establish financial penalties for a seller's violation of its provisions. [S. Appr]

SB 1216 (Hughes), as introduced February 26, would create a registration program for home inspectors within DCA. [S. B&P]

AB 229 (Baldwin). The Beverly-Killea Limited Liability Company Act, Corporations Code section 17000 et seq., allows certain business interests to operate a limited liability company (LLC), whereby the members of the LLC may not be held personally liable for the debts of the LLC except in those circumstances where a shareholder of a corporation could be held liable for the debts of the corporation. Under the Act, most providers of professional services are prohibited from operating as LLCs. As amended March 25, AB 229 would permit providers of approximately 50 types of professional services—including general contractors and subcontractors—to form LLCs. AB 229 failed passage in the Assembly Judiciary Committee on April 27, but was granted reconsideration. Supporters argue that the bill would be a boon to business by providing the liability shield to more types of businesses. Opponents argue that allowing professionals to escape personal liability for the harm they cause could place the public at risk. [A. Jud]

AB 1678 (Consumer Protection Committee), as amended April 27, is a technical clean-up bill which would make the following changes to the CSLL: (1) it would delete the $250 limit on delinquent renewal of a contractor's license, and allow CSLB to charge a delinquency fee ranging from $37.50 to $150; (2) it would restore the four-year statute of limitations for the filing of a misdemeanor complaint for violation of the home improvement contract provisions by an unlicensed contractor (this statute of limitations was inadvertently dropped in 1995 legislation); (3) it would allow consumers who go to small claims court to collect from contractors who have a cash deposit in lieu of a bond to collect up to $4,000 rather than just $2,500 (this amount was inadvertently reduced by 1998 legislation); and (4) it would make technical changes to specified reporting requirements of the Board pertaining to the sending of semi-annual workers' compensation reports to city and/or county building departments. [A. Appr]

SB 1306 (Committee on Business and Professions), as amended April 12, would extend the Board's sunset date to July 1, 2001, to enable legislative review of CSLB's performance during the fall of 1999 and to allow for the passage of legislation extending the sunset date during 2000 (see MAJOR PROJECTS). [S. Appr]

RECENT MEETINGS

At CSLB's January 26 meeting, Vice-Chair Joseph Tavaglione took over as Board Chair replacing Marilyn Dailey, whose term expired. CSLB selected Bob Alvarado as its new Vice-Chair. The Board presented Dailey and former members Donald Schultze and Pablo Wong with tokens of appreciation for their service to the public.

FUTURE MEETINGS

- October 20–21, 1999 in Los Angeles.
- November 9–10, 1999 in Riverside.