



[15:1 CRLR 109] The complaint alleges that while he was a lawyer at Latham & Watkins in Newport Beach, Mendoza prepared securities offerings for a First Pension entity and then provided misleading information on the offerings to DOC; the suit also names Latham & Watkins, an employee of a company related to First Pension, and First Pension's three operators, all of whom admitted to fraud in the case in August. The SEC has accused First Pension of losing \$121.5 million of investors' money by misleading them to make investments in mortgages that did not exist. All defendants named in the civil complaint are alleged to have violated California securities laws and to have committed breaches of fiduciary duty and fraud. Specifically, the suit alleges that Mendoza provided legal services to the operators of First Pension from 1992 until shortly before his appointment as DOC Commissioner in July 1993. The suit claims that Mendoza and the other defendants failed to disclose facts concerning the true nature of the limited partnership units sold by the defendants in documents provided to investors on a limited partnership offering sold in the mid-1980s. Commissioner Mendoza called the lawsuit "absurd and contemptible." At this writing, the matter is still pending in superior court.

On March 23, the California Supreme Court dismissed its review of the Second District Court of Appeal's decision in *People v. Charles Keating*, 16 Cal. App. 4th 280 (1993). Keating was found guilty on 17 counts for defrauding investors by encouraging them to buy worthless junk bonds instead of government-insured certificates. [15:1 CRLR 109; 12:4 CRLR 120-21; 12:2&3 CRLR 169] In his appeal to the California Supreme Court (No. S033855), Keating contended that he never personally interacted with investors, and that criminal liability for violations of Corporations Code sections 25401 and 25540 is limited to direct solicitors and sellers. Although the matter was fully briefed, oral argument was never granted. The Supreme Court stated that its decision to hear the appeal was "improvidently granted" and remanded the case to the Second District, where the 1993 decision will stand.

DEPARTMENT OF REAL ESTATE

Interim Commissioner:

John R. Liberator
(916) 739-3684

The Real Estate Commissioner is appointed by the Governor and is the

chief officer of the Department of Real Estate (DRE). DRE was established pursuant to Business and Professions Code section 10000 *et seq.*; its regulations appear in Chapter 6, Title 10 of the California Code of Regulations (CCR). The commissioner's principal duties include determining administrative policy and enforcing the Real Estate Law in a manner which achieves maximum protection for purchasers of real property and those persons dealing with a real estate licensee. The commissioner is assisted by the Real Estate Advisory Commission, which is comprised of six brokers and four public members who serve at the commissioner's pleasure. The Real Estate Advisory Commission must conduct at least four public meetings each year. The commissioner receives additional advice from specialized committees in areas of education and research, mortgage lending, subdivisions and commercial and business brokerage. Various subcommittees also provide advisory input.

DRE primarily regulates two aspects of the real estate industry: licensees (salespersons and brokers) and subdivisions. Pursuant to Business and Professions Code section 10167 *et seq.*, DRE also licenses "prepaid rental listing services" which supply prospective tenants with listings of residential real properties for tenancy under an arrangement where the prospective tenants are required to pay a fee in advance of, or contemporaneously with, the supplying of listings. Certified real estate appraisers are not regulated by DRE, but by the separate Office of Real Estate Appraisers within the Business, Transportation and Housing Agency.

License examinations require a fee of \$30 per salesperson applicant and \$60 per broker applicant. Exam passage rates average 56% for salespersons and 48% for brokers (including retakes). License fees for salespersons and brokers are \$170 and \$215, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales, or leases exceeding one year in length, of any new residential subdivisions consisting of five or more lots or units, DRE protects the public by requiring that a prospective purchaser or tenant be given a copy of the "public report." The public report serves two functions aimed at protecting purchasers (or tenants with leases exceeding one year) of subdivision interests: (1) the report discloses material facts relating to title, encumbrances, and related information; and (2) it ensures adherence to applicable standards for creating, operating, financing, and documenting the project. The commissioner will not

issue the public report if the subdivider fails to comply with any provision of the Subdivided Lands Act.

The Department regularly publishes three bulletins. *Real Estate Bulletin*, which is circulated quarterly as an educational service to all current licensees, contains information on legislative and regulatory changes, commentaries, and advice; in addition, it lists names of licensees who have been disciplined for violating regulations or laws. *Mortgage Loan Bulletin* is published twice yearly as an educational service to licensees engaged in mortgage lending activities. Finally, *Subdivision Industry Bulletin* is published annually as an educational service to title companies and persons involved in the building industry.

DRE publishes numerous books, brochures, and videos relating to licensee activities, duties and responsibilities, market information, taxes, financing, and investment information. In July 1992, DRE began offering one-day seminars entitled "How to Operate a Licensed Real Estate Business in Compliance with the Law." This seminar, which costs \$10 per attendee and is offered on various dates in a number of locations throughout the state, covers mortgage loan brokering, trust fund handling, and real estate sales.

The California Association of Realtors (CAR), the trade association joined primarily by agents and brokers working with residential real estate, is the largest such organization in the state. CAR is often the sponsor of legislation affecting DRE. The four public meetings required to be held by the Real Estate Advisory Commission are usually scheduled on the same day and in the same location as CAR meetings.

At this writing, DRE Chief Deputy Commissioner John Liberator continues to serve as Interim Commissioner, following the resignation of former DRE Commissioner Clark Wallace.

MAJOR PROJECTS

DRE Revenue Dropping. Although not dependent on the state budget for its funding, DRE is experiencing financial difficulties due to the severe downturn in California's real estate market, which has resulted in fewer licensees and fewer subdivision buyers; the market downturn has directly affected DRE's revenue, which comes from exam, license, and subdivision fees. DRE currently has 55 vacant employee positions which will remain unfilled due to its decreased revenue. DRE's Enforcement Division has taken the brunt of the impact, according to staff; as the market depressed, the Enforcement Division began to experience increased caseloads,



lengthening the time period between the filing of a consumer complaint and case resolution.

DRE is attempting to free up some of its resources by backing legislation such as AB 1644 (Granlund), which would relieve DRE investigators from conducting onsite investigations of out-of-state subdivision offerings (see LEGISLATION). DRE officials estimate that the change could free up two full-time positions, making those resources available for other Department activities.

Board Files Charges Against Rental Listing Services. In 1994, DRE issued desist and refrain orders to two San Fernando Valley prepaid rental listing services. [15:1 CRLR 117-18] One of the agencies, Quality Rentals, is now the subject of a February 6 DRE accusation in an action that could ultimately result in the revocation of the agency's license. DRE's accusation also names a second agency, Properties Unlimited, owned and operated by the same people who own Quality Rentals. Properties Unlimited ceased operations in June 1994, after only one year of business, as a result of dozens of lawsuits seeking refunds of service charges. DRE's accusation charges the two licensees with failing to pay promised refunds and using contracts not approved by DRE, as required by law.

Prepaid rental listing services charge a fee for lists of properties available for tenancy. As a result of several years of consumer complaints, the legislature gave DRE jurisdiction over the services; state law now requires listing services to refund all but a \$25 service charge to each client who does not ultimately find a suitable property through the provided lists. The refund law is the source of the vast majority of consumer complaints generated by listing services.

Both Quality Rentals and Properties Unlimited charged clients \$150 for their service. However, when the consumer applies for a list, he/she must enter into two separate contracts. The first contract, properly submitted to DRE by the listing service, placed the fee for the listing service at \$50 and included the required promise to refund the fee less the \$25 service fee. The second contract, unapproved by DRE, bought the consumer a \$100 credit check with a no-refund clause. When dissatisfied consumers asked for refunds, the listing services told some customers that the contract limited their refund to \$25, and altogether denied other customers' refund requests. According to DRE staff, this situation is exactly what the licensing and contract review requirements are supposed to prevent.

Quality Rentals contends that DRE does not have jurisdiction over the credit check procedure, and that such a procedure is standard practice in the business. Quality Rentals is expected to challenge DRE's enforcement action.

LEGISLATION

SB 537 (Hughes). Existing law requires the county recorder, upon payment of proper fees and taxes, to accept for recordation any instrument, paper, or notice that is authorized or required by law to be recorded. As amended May 16, this bill would provide that in addition to other recording fees, upon the adoption of a resolution by the county board of supervisors, a fee of \$1 shall be paid at the time of recording of every instrument, paper, or notice, and placed in the Real Estate Fraud Prosecution Trust Fund to be distributed by the county auditor or director of finance, as determined by a Real Estate Fraud Prosecution Fund Committee, to district attorneys and local law enforcement agencies for the purpose of determining, investigating, and prosecuting real estate fraud crimes. [S. Floor]

SB 1201 (Hughes), as introduced February 24, would add a \$5 surcharge to county fees for the recording of instruments, papers, or notices affecting the title to or possession of real property, and require the fees collected to be paid to the Controller, deposited in the Real Estate Fraud Special Fund, and continuously appropriated to DRE and to local law enforcement and prosecutorial agencies for the purpose of investigating and prosecuting real estate fraud crimes. [S. Jud]

AB 1117 (Hawkins). Existing law provides that a person may testify as an expert if he/she has special knowledge, skill, experience, training, or education sufficient to qualify him/her as an expert on the subject to which his/her testimony relates. As introduced February 23, this bill would provide that notwithstanding this provision, an officer or employee of DRE or the Office of Real Estate Appraisers may not testify as an expert in a private civil action to determine whether a real estate licensee has fulfilled his/her professional obligations with due care. [A. Jud]

SB 467 (Leonard). Existing law requires persons acting as listing and selling agents, as defined, to provide sellers and buyers with a disclosure form containing general information on agency relationships in specified residential real property transactions. Existing law requires contracts in these transactions to specify (1) whether the listing agent represents the seller exclusively or both the buyer and seller, and (2) whether the listing or selling

agent represents the buyer exclusively, the seller exclusively, or both the buyer and seller. Existing law specifies, with respect to these transactions, that neither the payment of compensation nor the obligation of a buyer or seller to pay compensation to a real estate agent is necessarily determinative of a particular agency relationship. Existing law specifies that associate real estate licensees are agents of the real estate agent, and when an associate real estate licensee owes a duty to any principal or to any buyer or seller who is not a principal, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. Existing law expressly precludes dual agents, as defined, from disclosing specified price information to the other party without consent. Existing law specifies that a listing agent is not a dual agent solely by reason of being the selling agent, and expressly precludes a listing agent from acting as an agent for the buyer only. Existing law, with respect to these transactions, specifically authorizes contracts between principal and agent to be modified to change the agency relationship, before performance of the act that is the object of the agency, by the written consent of the parties to the agency relationship. Existing law also provides that these provisions specifying the duties of an agent, as defined, to the buyer and seller in a residential real property transaction shall not be construed to diminish the duty of disclosure owed buyers and sellers by agents, as specified, or to relieve them from liability for breach of a fiduciary duty or duty of disclosure. As amended May 14, this CAR-sponsored bill would repeal and reenact those provisions as part of existing general provisions relating to duties owed to prospective purchasers of residential property; it is not intended to change existing substantive law. [A. CPGE & ED]

AB 1309 (Boland). Under existing law, a person who takes an examination to obtain a real estate salesperson license is required, prior to the issuance of the license or within 18 months after issuance, to submit evidence, satisfactory to the Real Estate Commissioner, of successful completion at an accredited institution of two specified courses; a salesperson who then qualifies for a license is exempted from the requirement that he/she take specified continuing education courses for the first license renewal. As introduced February 23, this CAR-sponsored bill would delete this exemption. [S. B&P]

SB 258 (O'Connell). Existing law does not regulate persons who perform home inspections for a fee. As amended May 11,



this bill would define terms related to paid home inspections, establish a standard of care for home inspectors, and prohibit certain inspections in which the inspector or the inspector's employer, as specified, has a financial interest. The bill would also provide that contractual provisions seeking to limit the liability of home inspectors to the cost of the inspection are contrary to public policy and invalid. The bill would, in addition, identify and limit the persons who may bring an action arising out of a home inspection. [S. Jud]

SB 946 (Johnston). Existing law which permits real estate brokers to deposit funds received in trust with an out-of-state depository institution in certain instances will be repealed on January 1, 1996. As amended April 17, this bill would delete the repeal of these provisions, and make related changes.

Under existing law, a real estate broker who meets specified criteria, including making loans or sales in excess of certain amounts, is required to file annual reports and periodic trust fund status reports with the Real Estate Commissioner. This bill would provide that in determining the applicability of loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, if the broker is a licensed residential mortgage lender acting under the authority of that license and meets specified criteria, certain loans and sales are not counted.

The California Residential Mortgage Lender Act, which will become operative January 1, 1996, if certain conditions are met, requires persons making or servicing residential loans to be licensed, unless exempt. The bill would require an applicant for a license to submit a copy of the fidelity bond currently in effect; permit a licensee to place funds in an interest-bearing account at the request of the owner; and revise bond requirements, and limit assessments imposed to pay for costs of regulation. [A. B&F]

AB 1646 (Conroy). The Escrow Law exempts from its provisions, among others, any person licensed to practice law in California who is not actively engaged in conducting an escrow agency, any licensed real estate broker while performing acts in the course of or incidental to a real estate transaction in which the broker is an agent or a party to the transaction and in which the broker is performing an act for which a real estate license is required, and persons whose principal business is that of preparing abstracts or making title searches, as specified. As amended April 17, this bill would delete the exemption of licensed real estate brokers, and require that every person licensed

to practice law in this state, and, to the extent of any exemption under the escrow law, title insurers, underwritten title companies, and controlled escrow companies, that perform escrow activities shall have all escrow trust accounts covered by a fidelity bond in an amount equal to the amount on deposit with the respective entity. [A. B&F]

AB 530 (Weggeland). Existing law requires specified written disclosures to be made to prospective transferees of real property, the waiver of which is declared void as against public policy. As amended May 15, this bill would declare the intent of the legislature that the delivery of a disclosure statement may not be waived in an "as is" sale, as held in *Loughrin v. Superior Court*, 15 Cal. App. 4th 1118 (1993). [A. Floor]

AB 1831 (Morro). Existing law sets forth the duties owed by real estate agents and their associate licensees, subagents, and employees to buyers and sellers of real property. As amended April 26, this CAR-sponsored bill would clarify the holding in *Salahudin v. Valley of California*, 24 Cal. App. 4th (1994), to provide that a person licensed under the Real Estate Law and acting with regard to his/her principal within the course or scope of that license generally acts in a fiduciary capacity, but that acts of ordinary negligence do not constitute a breach of that fiduciary duty. The bill would make real estate agents liable only for out-of-pocket damages when they make a negligent misrepresentation, rather than "benefit-of-the-bargain" damages for constructive fraud. The Consumer Attorneys of California (formerly the California Trial Lawyers Association) opposes this bill. [A. Jud]

SBX 8 (Campbell). Existing law requires that specified information be revealed to a purchaser of real property prior to sale. As amended May 15, this bill would also require that a disclosure statement containing specified information regarding certain natural conditions or hazards be delivered to a prospective purchaser of real property.

Existing law requires dam owners, who the Office of Emergency Services determines own facilities whose failure would result in death or injury, to prepare inundation maps showing the areas of potential flooding. This bill would require an agent for a seller of real property, or the seller if the seller is not represented by an agent, to disclose to any prospective purchaser the fact that the property is located within an area of potential flooding if the inundation maps or the information contained in those maps is reasonably available. The bill would also require a city or

county that includes areas covered by inundation maps to post a notice at the office of the county recorder, county assessor, and the planning department. The bill would impose similar disclosure, notice, and posting requirements in the case of property located in a very high fire hazard severity zone.

Existing law sets forth various disclosure requirements for an agent of a seller, or the seller if the seller is not represented by an agent, of real property located in earthquake fault and seismic hazard zones, and in state fire prevention and suppression responsibility areas, and specifies certain conditions for the posting of information by a county that includes an area covered by a zone or responsibility area at the offices of the county recorder, county assessor, and county planning commission. Existing law authorizes the posting of notice regarding seismic hazard maps at any other location determined by the county to be necessary to achieve adequate distribution. This bill would also provide for posting of notices relating to earthquake fault and seismic hazard zone maps by cities, and specify that information regarding zone maps be posted at the offices of the county recorder, county assessor, and county or city planning departments, and that information regarding responsibility areas be posted at the offices of the county recorder, county assessor, and county planning department. It would authorize the posting of notice regarding earthquake fault zones and fire responsibility areas at any other location determined by the county, or county or city, to be necessary to achieve adequate distribution. [S. Jud]

AB 1644 (Granlund). Under existing law, a person acting as a principal or agent in this state may not sell, lease, or offer for sale or lease lots or parcels in a subdivision situated outside of this state but within the United States, except as specified. This limitation does not apply to a time-share project, as defined. As amended April 26, this DRE-sponsored bill would repeal this provision and instead provide that a person acting as a principal or agent who intends, in this state, to sell, lease, or offer for sale or lease lots, parcels, or interests in a subdivision located outside of this state but within the United States is required, prior to any sales, leasing, or offering, to register the subdivision with the DRE Commissioner. This bill would provide that the application for registration is required to be made on a form acceptable to the Commissioner, which contains specified information. The bill would establish the fees which accompany various applications in connection with that registration.



Existing law defines the terms "improved out-of-state residential subdivision" and "improved out-of-state time-share project." This bill would repeal these definitions.

Under existing law, the sale or lease or the offering for sale or lease of lots or parcels in a subdivision situated outside of the state are governed by provisions of law relative to real property securities dealers and subdivided land, as specified. This bill would repeal that provision.

Under existing law, when an inspection is to be made of subdivided lands situated outside California which are to be offered for sale or lease in this state, the applicant is required to provide a questionnaire and a filing fee, together with an amount, estimated by the Commissioner, for travel from the DRE office where the filing is made to the location of the project, and an amount estimated to be necessary to cover the actual and necessary subsistence expenses incurred in the inspection. This bill would repeal this provision.

Under existing law, the DRE Commissioner may issue a preliminary or a conditional permit, as specified, for an improved out-of-state residential subdivision upon receipt of a substantially complete application for the subdivision. This bill would repeal this provision.

This bill would provide that it is unlawful for a person to sell, lease, or offer for sale or lease specified lots, parcels, or interests in a subdivision located entirely outside of this state but within the United States, unless any printed material, literature, advertising, or invitation in this state relating to that sale, lease, or offer clearly and conspicuously contains a disclaimer, in ten-point type, as specified. The bill would provide for a separate disclaimer for agreements or contracts to lease or purchase that property where the offer is made to a California resident in California.

This bill would also enact provisions that regulate the sale, lease, and offer for sale or lease of multi-state time-share interests in California. This bill would provide that on and after the date upon which the total number of owners of interests in a qualified resort vacation club first exceeds 200, the DRE Commissioner may not impose an absolute presale requirement by regulation.

Under existing law, DRE is required to submit a final report to the legislature on or before January 1, 1996, regarding the effectiveness of the regulation of qualified resort vacation clubs. This bill would extend that date to January 1, 1999.

Under existing law, those provisions that regulate qualified resort vacation clubs would remain in effect only until January

1, 1997. This bill would extend that date to January 1, 2000.

Under existing law, the terms "subdivided lands" and "subdivision" refer to improved or unimproved land or lands, wherever situated in the United States. This bill would instead provide that these terms refer to improved or improved land or lands wherever situated within California.

Under existing law, the limitation of specified provisions relative to subdivided land to subdivisions within the United States do not apply to a time-share project which consists of, or will consist of, two or more distinct geographic locations. This bill would instead exempt subdivisions located entirely outside California from the operation of the subdivided land provisions. [A. Floor]

SB 310 (Craven). Existing law regulates mobilehome parks in various capacities, and—among other things—requires a subdivider, at the time of filing a tentative or parcel map for a subdivision to be created using financing or funds from a specified source, to avoid the economic displacement of nonpurchasing residents. Existing law also requires a subdivider to offer each existing tenant an option to purchase his/her condominium unit which is to be created by conversion of a mobilehome park into condominium units. As amended March 27, this bill would replace the reference to subdivisions from the specified funding source with a reference to subdivisions created from the conversion of a rental mobilehome park to resident ownership, and add further requirements for avoiding economic displacement of nonpurchasing residents. The bill would extend from four to five years the period between rent increases for specified nonpurchasing residents; provide an alternate method for avoiding the economic displacement of nonpurchasing residents if the subdivider does not offer each existing tenant an option to purchase his or her subdivided interest which is to be created by the conversion of the park; and extend the existing provisions relating to the option to purchase condominium units and interests to include subdivided units and interests.

This bill would provide that the requirements imposed on a subdivider in connection with avoiding economic displacement of nonpurchasing residents establish a statewide standard for the regulation of mobilehome park conversions in this context, and would prohibit a local agency from enacting more stringent measures.

Existing law regulates the membership of nonprofit mutual benefit corporations, and generally prohibits the holding of

multiple or fractional memberships in these corporations, with certain exceptions. This bill would add to the specified exceptions by providing that a commercial lender who, pursuant to a security interest in a membership in a mobilehome park acquisition corporation, as defined, has taken title to the membership, and who is actively attempting to resell the membership, according to specified conditions, may own more than one membership.

Existing law requires any person who intends to offer subdivided lands for sale or lease, as specified, to file with DRE an application for a public report consisting of, among other things, a notice of intention, as specified. Existing law provides that the notice of intention is not applicable to the purchase of a mobilehome park by a nonprofit corporation, under specified circumstances, including the requirement that a permit to issue securities is obtained from the Department of Corporations, as specified. This bill would change all references to "tenants" of mobilehome parks to "homeowners," and would define that term for purposes of these provisions. The bill would add, as an alternative to obtaining a permit from the Department of Corporations exemption of the issuance of memberships from registration pursuant to a specified provision of law.

This bill would provide that, notwithstanding any other provision of law, the subdivider of a mobilehome park that is proposed to be converted to resident ownership shall make a specified written disclosure to homeowners and residents of the park, with regard to the tentative price of the subdivided interest proposed to be sold or leased. [A. H&CD]

■ LITIGATION

On March 16, Attorney General Dan Lungren issued *Opinion No. 94-909*, in response to Senator Leroy Greene's inquiry whether a licensed real estate broker acting in the capacity of a mortgage loan broker may pay a commission to an unlicensed person for providing the name, telephone number, and address of a prospective borrower, when that information leads to concluding a loan transaction. The Attorney General concluded that such a broker may pay a commission to an unlicensed person for providing the name, telephone number, and address of a prospective borrower, when that information leads to concluding a loan transaction, provided that the unlicensed person has not obtained the information in the course of soliciting borrowers or lenders on behalf of another or others.

Business and Professions Code section 10130 provides that it is unlawful for any



person to engage in the business of, act in the capacity of, advertise or assume to act as a real estate broker or real estate salesperson within this state without first obtaining a real estate license from DRE. A "real estate broker," as defined in section 10131, includes a person who, for compensation or in expectation of compensation, regardless of the form or time of payment, does or negotiates to do one or more of the following acts for another or others:

- sells or offers to sell, buys or offers to buy, solicits prospective sellers or purchasers of, solicits or obtains listings of, or negotiates the purchase, sale, or exchange of real property or a business opportunity;

- leases or rents or offers to lease or rent, or places for rent, or solicits listings of places for rent, or solicits for prospective tenants, or negotiates the sale, purchase, or exchange of leases on real property, or on a business opportunity, or collects rents from real property, or improvements thereon, or from business opportunities;

- assists or offers to assist in filing an application for the purchase or lease of, or in locating or entering upon, lands owned by the state or federal government;

- solicits borrowers or lenders for or negotiates loans or collects payments or performs services for borrowers, lenders, or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity; or

- sells or offers to sell, buys or offers to buy, or exchanges or offers to exchange a real property sales contract, or a promissory note secured directly or collaterally by a lien on real property or on a business opportunity, and performs services for the holders thereof.

The Attorney General noted that a real estate broker may not compensate an unlicensed person to perform acts for which a license is required. In determining whether a real estate broker, acting as a mortgage broker in performing the services described above, may pay a fee to an unlicensed person who provides "finder" information, the Attorney General explained that the role of the finder would be to enable the broker to identify and contact persons who may be interested in obtaining a loan through a secured transaction; accordingly, the Attorney General stated that the central issue is whether, in bringing together the broker and the borrower in this fashion, the finder is performing an act for which a real estate license is required. If so, the unlicensed finder may not be compensated by the broker.

The Attorney General stated that in California, a "finder's exception," allowing an unlicensed person to be compensated for introducing parties to a real estate transaction, has been judicially sanctioned since 1923. Further, the Attorney General commented that DRE correctly interprets the current law as precluding any solicitation for another or others by an unlicensed person of prospective sellers, purchasers, landlords, renters, borrowers, or lenders for compensation. Accordingly, the Attorney General stated that the finder's exception is thus available in the usual situation of someone becoming aware of information without soliciting it on behalf of someone else in expectation of compensation. However, the finder's exception is not available where the finder does more than introduce the parties to each other; a finder may not become involved in the negotiations without being duly licensed.

DEPARTMENT OF SAVINGS AND LOAN

Interim Commissioner:
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(213) 897-8202

The Department of Savings and Loan (DSL) is headed by a commissioner who has "general supervision over all associations, savings and loan holding companies, service corporations, and other persons" (Financial Code section 8050). DSL is part of the larger Business, Transportation, and Housing Agency. The Savings and Loan Association Law is in sections 5000 through 10050 of the California Financial Code. Departmental regulations are in Chapter 2, Title 10 of the California Code of Regulations (CCR). The Department, which has been recently downsized by the Wilson administration [13:4 CRLR 128], now consists of four employees regulating only ten state-chartered savings and loan institutions, two of which are currently seeking conversion to a federal charter. The DSL staff includes the Interim Commissioner, an examiner, a staff analyst, and a part-time assistant.

Although recent state budgets refer to DSL as the "Office of Savings and Loan," DSL is still officially a department. Its responsibilities technically include licensing, examination, and enforcement, but the trend is away from state chartering of S&L institutions. DSL no longer performs field audits of state-chartered S&Ls, and its enforcement powers have been reduced to reviewing analyses performed by the federal Office of Thrift Supervision.

LEGISLATION

SB 616 (Marks). Existing law requires banks and other financial institutions to maintain certain information concerning charges and interest on accounts, and to make that information available to the public. Existing law also requires banks and other financial institutions to furnish depositors with statements concerning charges and interest on accounts. As amended May 4, this bill would prohibit a supervised financial organization, defined to include banks, savings associations, savings banks, and credit unions, from charging and collecting deposit item return fees applicable to consumers who deposit checks that are subsequently not honored due to insufficient funds. [S. FI&IT]

AB 1482 (Weggeland). The Riegle-Neal Interstate Banking and Branching Efficiency Act will become effective on September 29, 1995, one year after being signed into law by President Clinton; the Act will allow interstate bank branching, mergers, transactions, and acquisitions. [14:4 CRLR 134] AB 1482, as amended April 24, would amend state law regulating banks and S&Ls to make it conform it to the new federal law. [A. Appr]

LITIGATION

On March 23, the California Supreme Court dismissed its review of the Second District Court of Appeal's decision in *People v. Charles H. Keating*, 16 Cal. App. 4th 280 (1993). Keating was found guilty on 17 counts for defrauding investors by encouraging them to purchase worthless junk bonds instead of government insured certificates; in his appeal (No. S033855), Keating contended that he never personally interacted with investors, and that criminal liability for violations of Corporations Code section 25401 and 25540 is limited to direct solicitors and sellers. [15:1 CRLR 119; 14:4 CRLR 135; 14:2&3 CRLR 143-44] Although the action was fully briefed, oral argument was never granted. The Supreme Court stated that its decision to hear the appeal was "improvidently granted" and remanded the case to the Second District, where the 1993 decision will stand.

