



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

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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.

