Department, may attempt to consolidate the cases.

In yet another Proposition 103 case, the California Supreme Court rebuffed a 1990 attempt by former Attorney General John Van de Kamp to force insurers into offering "good driver discounts" as required by Proposition 103. Frustrated at then-Insurance Commissioner Gillespie's failure to implement the initiative, Van de Kamp's office filed suit against Farmers, charging it (in part) with a violation of the unfair business practices act for its refusal to offer 20% good driver discounts as required by Proposition 103. Farmers demurred, claiming the state should exhaust its administrative remedies through the Department of Insurance. Although both the trial court and the court of appeal overruled the demurrer to the unfair business practices claim, the California Supreme Court reversed. Writing for the 6–1 majority in ***Farmers Insurance Exchange v. Superior Court***, No. S016912 (Apr. 6, 1992), Chief Justice Malcolm Lucas stayed the case, relying on the primary jurisdiction doctrine developed in the federal courts and not the exhaustion doctrine argued by the insurer. Justice Mosk dissented, noting that the primary jurisdiction doctrine does not and never has existed in California, and that DOI is "understaffed and overburdened with litigation relating to Proposition 103," such that the Attorney General's assistance in enforcing the law was welcomed.

On February 25, the Second District Court of Appeal held that an insurer was obligated to defend its insured in suits brought for harm caused by toxic chemical dumping 35 years before coverage began. In ***Montrose Chemical Corp. of California v. Admiral Insurance Co.***, No. B048757, the appellate court said the insured, Montrose, was entitled to defense costs for claims resulting from its dumping of DDT in the late 1940s that resulted in damage through the 1980s. The insurer argued for application of the "manifestation of loss" rule, which would preclude coverage because Montrose knew or should have known of the contamination problems long before the effective date of Admiral's coverage. The trial court agreed. However, the Second District reversed, declining to apply the "manifestation of loss" rule to third-party claims. Instead, the court applied the "continuing injury" trigger of coverage, relying heavily on language in Admiral's insurance policy which defined "occurrence" as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of [Montrose]." Under this view, the timing of the cause of the injury or damage is immaterial, as is the date of discovery of the injury or damage, and it is only the effect which matters. "[I]f injury or damage is continuous or progressive throughout successive policy periods, coverage is triggered under the policies in effect for all periods." On May 21, the California Supreme Court granted Admiral's petition for review in this case, which has attracted nationwide attention.

On March 24, the U.S. District Court for the Northern District of California held that an insurer was obligated to defend an insured accused of misrepresentation stemming from the advertising of manufactured homes it sold. In ***American States Insurance Company v. Canyon Creek***, No. 90-2376, the court said the insured, Napa Estates Venture, was entitled to be defended by the insurer because of the "advertising injury" coverage in its comprehensive general liability (CGL) policy. Napa Estates Venture sold manufactured housing in Napa; it was subsequently sued by four homeowner groups and the Napa County District Attorney's Office for intentional and negligent misrepresentation and unfair business practices. While the court did not find Napa Estates' intentional misdeeds constituted an "occurrence" as defined by the policy, the court was willing to find coverage under the "advertising injury" provision of the policy. The court refused to accept the insurer's contention that this coverage applies only when the insured engages in dissemination of promotional material to the public at large. Instead, the court adopted a broad reading of the coverage and found that advertising in periodicals and distribution of promotional materials to potential purchases who toured the homes constituted "advertising activity."

The holding of the *American States* court relates to ***Bank of the West v. Superior Court***, 226 Cal. App. 3d 835 (1991), now under review by the California Supreme Court. *[11:2 CRLR 126, 186]* The appellate court decision held that the standard CGL policy including the phrase "unfair competition" must be broadly interpreted given its ambiguity. Specifically, the insured there argues that ambiguity must be interpreted in favor of coverage and that the phrase "unfair competition" in the advertising coverage section includes more than the negligent advertising or standard common law business torts urged by the insurer. Instead, the insured contends that the reference in the advertising injury clause to "unfair competition" writes into coverage the entire scope of the "unfair competition" statute of California—Business and Professions Code section 17200. Since that section has been interpreted to apply to any unlawful or unfair act in competition, including the selling of obscene literature, hiring illegal aliens, violating mobile home rules, antitrust violations, and selling endangered whale meat, the affirmance of such a broad definition will have momentous implications on both insurance companies' duty to defend and on their direct scope of coverage.

DEPARTMENT OF REAL ESTATE

Commissioner: Clark E. Wallace
(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.

The Department primarily regulates two aspects of the real estate industry: licensees (as of September 1991, 257,599 salespersons and 96,310 brokers, including corporate officers) and subdivisions.

License examinations require a fee of $25 per salesperson applicant and $50 per broker applicant. Exam passage rates average 67% for both salespersons and brokers (including retakes). License fees for salespersons and brokers are $120 and $165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales or leases of most residential subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the "public

report." The public report serves two functions aimed at protecting buyers of subdivision interests: (1) the report requires disclosure of material facts relating to title, encumbrances, and similar 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 publishes three major publications. The *Real Estate Bulletin* is circulated quarterly as an educational service to all real estate licensees. It contains legislative and regulatory changes, commentaries and advice. In addition, it lists names of licensees against whom disciplinary action, such as license revocation or suspension, is pending. Funding for the *Bulletin* is supplied from a $2 share of license renewal fees. The paper is mailed to valid license holders.

Two industry handbooks are published by the Department. *Real Estate Law* provides relevant portions of codes affecting real estate practice. The *Reference Book* is an overview of real estate licensing, examination, requirements and practice. Both books are frequently revised and supplemented as needed. Each book sells for $15.

The California Association of Realtors (CAR), the industry's trade association, is the largest such organization in the state. As of September 1991, approximately 131,000 licensed agents are members. CAR is often the sponsor of legislation affecting the Department of Real Estate. The four public meetings required to be held by the Real Estate Advisory Commission are usually on the same day and in the same location as CAR meetings.

On March 19, the Senate approved Governor Wilson's appointment of Clark E. Wallace as DRE Commissioner.

MAJOR PROJECTS:

State to Extend Deadline for Appraiser Certification. The federal Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 requires all states to institute a licensing and certification program for real estate appraisers who engage in federally-related appraisal activity. In response to the federal mandate, California enacted AB 527 (Hannigan) (Chapter 491, Statutes of 1990), which created the Office of Real Estate Appraisers (OREA) within DRE. In 1991, OREA adopted emergency regulations establishing four levels of appraiser licensing and certification. *[11:4 CRLR 140]* Last year, the effective date of the program—July 1, 1991—was extended to January 1, 1992. After another extension by the federal government, OREA extended the effective date of its appraiser certification program to July 1, 1992 by way of another emergency regulation. However, implementation of California's appraiser certification program is expected to be delayed even further under the terms of SB 1958 (Presley), which is moving rapidly through the legislature at this writing. If enacted, SB 1958 would preclude implementation of the certification requirement until 7,400 individuals have applied for certification and/or licensure, passed the required examination(s), and paid all applicable fees (*see infra* LEGISLATION). At this writing, only 3,708 people have satisfied all the requirements and paid their fees. Despite the temporary reprieve, OREA officials are warning that appraisers not yet licensed should immediately commence the application process.

DRE Presents Long-Range Plan. Last August, the Commissioner and DRE staff began a series of meetings to develop a four-year plan for the Department. In March, DRE completed this long-range plan, much of which requires further detailing and implementation strategies. Since the planning process is an ongoing one, the Department will review the plan on an annual basis and make appropriate adjustments.

The plan is divided into the following seven major sections: administrative services; enforcement; legal; subdivisions, audits; mortgage lending; and legislation and information.

The general objective of DRE's administrative services section is to provide financial management, personnel, electronic data processing, training, and business services, and to assist licensees and the public in examinations, licensing, and research activities. Specific objectives include evaluating the feasibility of decentralized examination sites; analyzing revenue sources, fee sources, expenditure levels, and controls; and making appropriate recommendations.

The objective of DRE's enforcement section is to seek compliance with the Real Estate Law by investigating complaints and recommending action thereon in a consistent and equitable manner. Specific objectives include evaluating appropriate caseload levels for deputies and determining statutory and regulatory changes needed to streamline the investigation process.

The objectives of DRE's legal section are to administratively prosecute violations of the Real Estate Law and Subdivided Lands Law; provide in-house legal services to DRE; and process applications for payment from the Real Estate Recovery Account. *[12:1 CRLR 126]* Specific objectives include evaluating in-house legal representation versus Attorney General representation and analyzing the future of the Recovery Account.

The objective of DRE's subdivisions section is to protect the buying public through review of applications for compliance with the Subdivided Lands Law and issuance of public reports. Specific objectives include evaluating legislative and regulatory proposals to streamline the approval process.

The objective of DRE's audits section is to protect the consumer through financial compliance audits of real estate licensees and subdivision developments. Specific objectives include determining appropriate audit goals and requisite staffing, and standardizing audit procedures.

The objectives of DRE's mortgage lending section are to monitor statutorily-defined elements of the real estate financial industry and assure compliance with related legal requirements. Specific objectives include improving means of identifying those involved in mortgage loan broker activities and evaluating broker-controlled escrow requirements.

The objectives of DRE's legislation and information section are to coordinate DRE's legislation and regulation program, coordinate production of DRE publications, and manage media relations. Specific objectives include determining ways to increase communications and improve the Department's image.

Commissioner Completes Appointments. In March, DRE Commissioner Clark Wallace appointed two new members to the Real Estate Advisory Commission to fill the remaining vacancies. *[12:1 CRLR 126]* The two newly-appointed members are Michael Cortney, President of Standard Pacific of Northern California, a residential development company, and a member of the Building Industry Association; and Walter Muir, President and Chair of the Board of Medallion Mortgage Company and Treasurer of the California Mortgage Bankers Association.

Industry and Consumer Liaison Appointed. In March, DRE Commissioner Wallace appointed Pablo Wong as the Department's Industry and Consumer Liaison. Wong, who has extensive real estate experience, will establish a new program to interface between DRE, the real estate industry, and consumers.

Glen Ivy Files for Liquidation. On April 30, Glen Ivy, which at one time

operated more than 24 resorts worldwide, filed for bankruptcy court liquidation; the Chapter 7 filing came approximately four months after state and local officials raided the Corona offices of Glen Ivy Financial Group on suspicion that the company may have been involved in fraudulent transactions in the sale of timeshares. *[12:1 CRLR 126; 11:4 CRLR 140]* The three corporate entities named in the bankruptcy petition are Glen Ivy Holdings Inc., Glen Ivy Financial Group Inc., and Glen Ivy Resorts. However, the bankruptcy petition did not identify the specific assets and liabilities of the three entities, nor did it include a list of creditors. Other Glen Ivy subsidiaries, including Glen Ivy Equity Mortgage Corp., Glen Ivy Travel Inc., and Glen Ivy Management Co., were not included in the filing.

Glen Ivy spokesperson David McAdam stated that the company decided to file for liquidation after it was unable to obtain new loans to keep operating and because of "creditor pressure due to the financial condition of the company." However, an attorney representing as many as 60,000 consumers and investors in a class action against Glen Ivy characterized the bankruptcy filing as "a cheap way for them to dodge their responsibilities." The class action alleges that Glen Ivy made numerous false and fraudulent promises regarding timeshare units in order to convince consumers and investors to buy the units at overinflated prices. In July 1991, DRE placed the real estate license of Glen Ivy Properties, the company's timeshare unit, on probation for five years for a number of infractions, including incomplete recordkeeping in customer accounts. *[11:4 CRLR 140]*

DRE Rulemaking. On February 28, DRE published notice of its intent to adopt new sections 2814, 2815, 2817, 2835, and 2847.3, and amend sections 2715, 2742, 2770.1, 2792.16, 2792.17, 2792.20, 2792.22, 2792.23, 2800, 2806, and 2970, Chapter 6, Title 10 of the CCR.

Existing law provides that a qualified resort vacation club is deemed to be a timeshare project. The Real Estate Commissioner may deny issuance of a permit for a qualified resort vacation club unless it is determined that the project conforms to specified requirements. DRE's proposed adoption of sections 2814, 2815, and 2817 would specify the current standards, including disclosure requirements, which are applicable to qualified resort vacation club projects.

Business and Professions Code section 10176(e) prohibits commingling of the money or property of a DRE licensee with the money or property of others held by the licensee; however, current law contains no definition of the term commingling. Proposed section 2835 would describe certain short-term deposits which do not constitute commingling within the meaning of section 10176(e).

Currently, regulatory section 2715 requires real estate brokers, real estate brokers acting in the capacity of a salesperson to another broker under written agreement, and real estate salespeople to maintain their business and residence addresses on file with the Commissioner. DRE's proposed amendment to section 2715 would expand this section to include the holder of a real estate license who fails to renew the license during the two-year right of late renewal period.

Currently, section 2742 requires an applicant for an original broker license for a domestic corporation to submit with the application a Certificate of Status, a Certificate of Qualification, or a Certificate of Good Standing to DRE. The proposed amendment to this section would require that any corporation which is licensed under the authority of Business and Professions Code 10211 remain at all times in good legal standing with the Office of the Secretary of State.

Sections 10235.5 and 17539.4 of the Business and Professions Code require a person, when advertising in California for a loan secured by real property, to identify the license under which the loan is made or arranged and the regulatory body supervising the loan transaction. The proposed adoption of section 2847.3 would specify acceptable terms for use by real estate brokers in advertising which will satisfy the requirements of sections 10235.5 and 17539.4. Currently, section 2770.1 allows the use of specific terms and/or abbreviations which are deemed sufficient to fulfill the designation requirements of Business and Professions Code section 10140.6. DRE's proposed amendment to section 2770.1 would state that the specified designations therein do not satisfy the requirements of Business and Professions Code section 10235.5 and 17539.4.

Civil Code section 1366 requires the association of a common interest subdivision to provide 30–60 days' advance mail notice to members of any increase in regular or special assessments or fees. Civil Code section 1365.5 prohibits the board of directors of an association from expending reserve funds for any purpose other than as specified in statute; however, the board of directors may act in limited circumstances to use the reserve fund to meet short-term cash flow requirements or other expenses of the association. The proposed amendments to section 2792.16 would specify these requirements in compliance with Civil Code section 1365.5, and implement and clarify section 1366's provision requiring advance notice to members of any increase in regular or special assessments or fees.

Civil Code section 1365 requires the board of directors of an association to distribute to the association's members a pro forma operating budget setting forth the amount of reserves needed and the actual cash reserves on hand at the end of the fiscal year for repair, replacement, restoration, or maintenance of major components. DRE's proposed amendments to section 2792.22 would implement and clarify the requirements of Civil Code section 1365.

Civil Code section 1363 requires meetings of the membership of the common interest development to be conducted in accordance with a recognized or adopted system of parliamentary procedure. This includes, among other things, notice of membership meetings which specifies the business to be considered, rules pertaining to executive session meetings, rules pertaining to minutes of meetings, and rights of individual association members. DRE's proposed amendments to sections 2792.17, 2792.20, and 2792.23 would implement the parliamentary procedure requirements specified in Civil Code section 1363.

Section 2800 of DRE's regulations currently provides, in part, that failure by a subdivider to pay assessments within two months after such assessments have become due and payable constitutes a material change in the subdivision offering. DRE's proposed amendment to this section would extend the period of time from two to three months.

Business and Professions Code section 10237.8 provides in part that every real property securities dealer shall file and maintain with the Commissioner a cash deposit or bond in the sum of $10,000. DRE's proposed amendment to section 2806 would eliminate such a cash deposit or bond requirement for an out-of-state subdivider.

Following a 45-day public comment period, DRE conducted a public hearing on these proposed changes on April 16; in response to public comments, DRE made minor modifications to its proposal, and released the modified language for an additional 15-day public comment period. At this writing, the public comment period has expired, and DRE is preparing the rulemaking file for submission to the Office of Administrative Law (OAL).

On April 7, OAL approved the Board's

adoption of 2807 and amendments to sections 2792.17, 2792.18, 2792.20, 2806, and 3000, Title 10 of the CCR. *[11:3 CRLR 135]*

At this writing, DRE's proposed adoption of sections 2708, 2709, 2724, and 2792.11, and proposed amendments to sections 2810.1, 3002, and 3011, Title 10 of the CCR, are undergoing review by OAL. *[12:1 CRLR 126]*

LEGISLATION:

AB 3469 (T. Friedman). Existing provisions of the Savings Association Law prescribe various criminal offenses and penalties for violations thereof, and provide for forfeiture of property or proceeds derived from these violations. As amended May 11, this bill would enact similar criminal forfeiture provisions for violation of the Real Estate Law, and would expand the list of criminal offenses, as specified, the violation of which subjects the violator to the forfeiture provisions. This bill would also provide that a petition for forfeiture may be filed prior to, in conjunction with, or subsequent to a criminal proceeding, and if filed prior to the criminal proceedings, the prosecuting agency shall provide concurrent notice to any parties subject to the proposed forfeiture that they are targets of an anticipated criminal action. The petition and any injunctive order shall be dismissed unless a criminal complaint is filed within 120 days after the filing of the petition. The bill would also provide that no injunctive order shall impair the ability of a defendant or interested party to pay legal fees relating to the criminal charges.

Existing law provides that the proceeds of forfeited property shall be distributed to the bona fide or innocent purchaser, conditional sales vendor, or holder of a valid lien, mortgage, or security interest, as specified. This bill would provide that the balance of any forfeited funds shall also be distributed to the victim of specified crimes committed by the defendants. *[A. W&M]*

AB 2583 (Johnson). The Escrow Law does not apply, among others, to any person licensed to practice law in California who is not actively engaged in conducting an escrow agency, nor to any licensed real estate broker while performing acts in the course of 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. As amended April 6, this bill would provide that those exemptions are personal to the persons listed and, except for salespersons licensed and acting under the supervision of a real estate broker, the duties, other than ministerial functions, shall not be delegated by the person. The bill would also provide that those exemptions are not available for any association with other persons which association is formed for the purpose of conducting escrows.

This bill would require all written escrow instructions executed by a buyer or seller to contain a statement in specified point type which shall include the license name, license number, if any, and the department issuing the license or authority under which the person is operating; this provision, which would not apply to supplemental escrow instructions or modifications to escrow instructions, would become operative on July 1, 1993.

This bill would also authorize the DRE Commissioner to issue desist or refrain orders for violations of the Escrow Law. *[A. Floor]*

SB 1958 (Presley). Existing law provides that on and after January 1, 1992, any person who engages in or proposes to engage in federally related real estate appraisal activity, as defined, shall be licensed or certified. (*See supra* MAJOR PROJECTS.) As amended March 12, this urgency bill would change the licensing or certification deadline to June 30, 1992, or a subsequent date upon which the Secretary of the Business, Transportation and Housing Agency issues a finding that 7,400 persons have been licensed or certified. This bill would also provide that the OREA Director shall, by regulation, require the application for a real estate appraiser license and real estate appraiser certificate to include the applicant's social security number. *[A. W&M]*

AB 2154 (Hannigan). Existing law provides that on and after January 1, 1992, any person who engages in or proposes to engage in federally related real estate appraisal activity, as defined, shall be licensed or certified. As amended April 1, this bill would change the licensing or certification deadline to the required date, including administrative extensions, set by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council for regulation of federally related real estate appraisal activity. *[S. Jud]*

AB 2490 (Brulte). Existing law requires the DRE Director to make an examination of any subdivision and, except as specified, issue a public report authorizing the sale or lease in this state of the lots or parcels within the subdivision. As amended April 23, this bill would authorize the Commissioner to issue a conditional public report for certain subdivisions if specified requirements are met, and would establish a fee of $500 for an application for a conditional public report. *[A. LGov]*

AB 2666 (Baker). Existing law exempts from the definition of a real estate broker certain persons, including the manager of a hotel, motel, auto and trailer park, the resident manager of an apartment building, complex, or course, and the employees of that manager. As amended April 9, this bill would include in that exemption any employee of a broker performing specified functions in connection with the renting or leasing of real property managed by the broker and used for vacation or recreational purposes, other than timeshare management persons who perform similar functions with regard to real estate sales, exchanges, loans, or loan servicing. The bill would require a broker who accepts or receives rental deposits or rents through an employee pursuant to performing these enumerated functions to deposit these funds as specified. *[A. W&M]*

SB 1522 (Leonard), as amended April 29, would regulate the sale in this state of nondomestic limited market subdivisions, as defined, and would provide that any sale shall be valid only if it complies with this provisions of this bill and a certificate of eligibility has been issued by the DRE Commissioner. *[A. LGov]*

SB 1692 (Royce). Existing law imposes various requirements upon an offer to sell or lease subdivided lands, including the filing of a notice of intention to sell with DRE, among other things; those requirements are inapplicable to the formation of a stock cooperative or the issuance of shares or other interests therein under specified conditions. As introduced February 20, this bill would repeal the exception for stock cooperatives. *[A. LGov]*

AB 3556 (B. Friedman). Under existing law, real estate brokers engaging in certain activities with respect to transactions involving the sale of real property sales contracts or debt instruments secured by real property, and meeting prescribed criteria, are subject to special requirements as to advertising, reporting, trust funds, and disclosure. As amended April 22, this bill would require a broker to report in writing the commission of certain authorized acts, as specified, to DRE within thirty days of the performance of those acts, with specified exceptions. *[S. BC&IT]*

AB 3343 (Peace), as amended April 30, would, until January 1, 1996, authorize a real estate broker to deposit funds received in trust when collecting payments or performing services for in-

vestors or note owners, as specified, in connection with loans secured by a first lien on real property, into an out-of-state depository institution insured by the Federal Deposit Insurance Corporation, notwithstanding other specified provisions. *[S. B&P]*

AB 3618 (Boland). The Real Estate Law makes it a crime for any person to act as a real property securities dealer in this state without a real estate broker's license, with an endorsement prescribed by the DRE Commissioner, and prescribes a fee for attaching the endorsement to the broker's license. As amended April 9, this bill would eliminate the requirement for an endorsement by the DRE Commissioner and the fee provision. *[S. BC&IT]*

SB 1917 (Thompson). The Real Estate Law provides that the DRE Commissioner may require materials used in obtaining advance fee agreements to be submitted to him/her for approval. As amended April 28, this bill would prohibit any person from accepting or receiving an advance fee for soliciting or performing services for borrowers in connection with loans to be secured directly or collaterally by a lien on real property, unless the person is a licensed real estate broker, as specified. The bill would not apply to the advance fees of any bank, savings association, credit union, industrial loan company, or person licensed as specified. *[A. BF&BI]*

AB 3565 (Frazee). Existing law requires the DRE Commissioner to adhere to specified timelines in reviewing a notice of intention and an application for issuance of a public report by a person who intends to offer subdivided lands within this state; those procedures are also applicable to an application for issuance of a permit for an accessible urban subdivision located out-of-state. As amended April 6, this bill would make those procedures applicable to an application for issuance of a permit for a qualified vacation resort club, as defined. This bill would also authorize the Commissioner to abandon an application for a subdivision public report for failure to provide the required data, as specified. *[S. H&UA]*

The following is a status update on bills reported in detail in CRLR Vol. 12, No. 1 (Winter 1992) at page 127:

SB 71 (Kopp), as amended April 20, pertains to the taxation of real property and is no longer specifically relevant to DRE.

SB 492 (Leonard), as amended May 11, would require a lender who receives an appraisal report in a federally related transaction to provide notice to a borrower within ten days of the receipt of the report by the lender that, upon request, the borrower is entitled to receive a copy of the report, if the borrower has paid for the cost of the appraisal. *[A. W&M]*

AB 814 (Hauser). Existing law exempts from the definition of a real estate broker certain persons, including the manager of a hotel, motel, auto and trailer park, the resident manager of an apartment building, complex, or course, and the employees of that manager. As amended February 27, this bill would, in addition, exempt any person or entity who, on behalf of another or others, solicits, arranges, or accepts reservations or money or both for transient occupancy in a dwelling unit in a common interest development, in a dwelling unit in an apartment building or complex, or in a single-family home. *[S. B&P]*

The following bills died in committee: ***AB 1436 (Floyd)***, which would have required a transferor to disclose whether the property is covered by home warranty protection; ***SB 1083 (Robbins)***, which would have provided that persons licensed as real estate brokers are deemed to be attorneys-in-fact for the purpose of depositing or transferring client funds to or from individual or pooled client trust deposits with banks; ***SB 952 (Dills)***, which would have enacted a Mortgage Loan Broker Law, established an Office of Mortgage Loan Broker Licensure within DRE, and required the DRE Commissioner to adopt requirements for certification as a mortgage loan broker; ***AB 1593 (Floyd)***, which would have transferred the licensing and regulatory functions of the State Banking Department, the Department of Savings and Loan, and the Department of Corporations to a Department of Financial Institutions, which the bill would have created; ***AB 776 (Costa)***, which would have authorized DRE, using funds from the Education and Research Account in the Real Estate Fund, to develop a research report to explore options for the state to provide for a residential mortgage guarantee insurance program for low-downpayment mortgages for California first-time homebuyers not currently served by the private market or by the Federal Housing Administration, and for low- and moderate-income rental housing; and ***AB 1234 (Frazee)***, which would have provided that, within the limits of the fees charged and collected under the laws regulating real estate, and within the limits of prudent administration, the Real Estate Fund shall be maintained at a level equal to DRE's projected annual budget.

LITIGATION:

On March 12, the California Supreme Court ordered the publication of ***Vaill v. Edmonds***, No. B045402 (June 25, 1991), in which the Second District Court of Appeal affirmed the trial court's finding that the DRE Commissioner improperly revoked the license of real estate agent Dana Vaill for allegedly failing to disclose certain information to property buyers concerning groundwater and landslide problems existing in the Big Rock Mesa area of Malibu. In April 1982, acting as the agent of the seller, Vaill negotiated the sale of a residence in the Big Rock Mesa area to John and Nancy Hudson; after some negotiation over the selling price, the Hudsons entered into an agreement to purchase the property in February 1983.

During one of their visits to the property, Vaill told the Hudsons that one of the neighboring houses had a problem with water on the property and that the residents had installed a pump to handle the problem; the Hudsons could see water from that pump draining from a pipe at the end of the driveway of the property they wanted to buy. Vaill also told the Hudsons that those same neighbors—whose residence was two lots from the Hudsons' property—had suffered a landslide in 1971. Vaill provided the Hudsons with a copy of a 1972 geological report (the "Merrill Report") regarding the property the Hudsons were interested in buying. The Report stated that although part of the property "lies within an ancient landslide," the lot seemed to be stable based on soil tests and geologic analysis. The Report also noted that groundwater buildup in Big Rock Mesa is expected to continue and recommended courses of action to minimize resulting damage.

Upon the urging of Vaill and others, the Hudsons hired a firm to produce a current geological report of the property. That report (the "Byers Report") confirmed that high groundwater is known to exist in the Big Rock Mesa area. Also, the Byers Report stated that a steep slope at the end of the property dropped 175 feet down to the Pacific Coast Highway and was locally eroded and exhibited signs of surficial instability; the Report stated that the upper portions of the slope were blanketed by weathered bedrock, soil, and colluvium which are subject to erosion and surficial failure upon saturation and during periods of intense rainfall. The Hudsons opened escrow on the property on March 16, 1983.

Because Vaill also resided in the Big Rock Mesa area, in late March 1983 she was sent a letter by the County of Los Angeles, Department of County Engineer Facilities, regarding a "serious and potentially hazardous condition" in that area

consisting of "the alarming rate of rise of the groundwater level." In April 1983, Vaill attended a meeting of area property owners at which a County engineer discussed the danger of land movement caused by high groundwater. Vaill did not inform the Hudsons about the letter from the County or that she had attended the meeting.

Escrow closed on the Hudson's property in May 1983. Two months later, tiles began to crack inside the house; in September, a fourteen-foot crevice opened up in the bluff-facing side of the Hudsons' yard. By January 1984, the Hudsons' property became so unstable that they were compelled to move.

On October 10, 1986, the DRE Commissioner filed an amended accusation against Vaill containing two causes of accusation. The first alleged grounds for suspension or revocation of Vaill's license under Business and Professions Code sections 10176(a) and (i) (misrepresentation, fraud, or dishonest dealing). The second cause of accusation alleged that Vaill violated Business and Professions Code section 10177(g), in that, as a real estate salesperson, she was negligent or incompetent in connection with the sale of a house.

After a hearing, an administrative law judge (ALJ) determined that Vaill did not commit fraud, negligence, or incompetence. However, the DRE Commissioner rejected the ALJ's findings and concluded that Vaill negligently or incompetently failed to advise the Hudsons concerning groundwater levels and future costs which would be incurred in connection with the necessity of removing the groundwater. The Commissioner ordered the revocation of Vaill's license and authorized the issuance of a restricted real estate salesperson's license pursuant to Business and Professions Code section 10156.5. Vaill petitioned the superior court for a writ of mandate compelling the Commissioner to vacate his order revoking her real estate salesperson's license; in October 1989, judgment was entered for Vaill.

On appeal, the Second District noted that, in determining whether the trial court's findings are supported by substantial evidence, conflicts in the evidence must be resolved in favor of the judgment; where two or more inferences can be reasonably drawn from the facts, the reviewing court must accept the inferences deduced by the trial court. The Second District determined that substantial evidence supported the trial court's findings that Vaill was neither negligent nor incompetent in regard to her advice as to the groundwater and instability of the Big Rock Mesa area. The court identified five separate incidents which indicated that the Hudsons were made aware of the groundwater problem and/or the possibility of landslide. The court stated that a reasonable construction of the licensing statutes required Vaill to provide the Hudsons with existing geology reports, urge them to commission their own independent geologist, and disclose the groundwater and landslide problems suffered by a neighbor; the court determined that there was substantial evidence that Vaill did all of these things.

The Commissioner also contended that there was no substantial evidence to support the trial court's implied finding that Vaill was not negligent in failing to apprise the Hudsons of all of the matters which were discussed at the April 1983 meeting. Specifically, the Commissioner argued that Vaill should have disclosed to the Hudsons (1) that the County was disavowing any liability for the rising groundwater levels in the area; (2) that the County was recommending that a geologic hazard abatement district be established; and (3) the potential costs of such a district. The court stated that as a real estate agent representing the seller, Vaill was required to disclose to the buyer facts which would materially affect the value or desirability of the property. The court acknowledged that a failure to disclose the high groundwater level and the risk of landslides associated with the property would constitute a failure to disclose a material face resulting in a finding of negligence. However, the court determined that the nondisclosure of the other matters discussed at the meeting was not negligent and not material. According to the court, the information provided at the meeting—even if viewed as negative—could not have been material to the Hudsons. "Knowing that the high groundwater level and landslide risk were existent, they nevertheless determined to buy the property. Knowing the existence of the groundwater problems, it can also be presumed that they knew they might incur some expense in resolving the problem." The court determined that the information provided at the meeting established that steps were finally being taken to resolve a long-standing problem. "Assuming knowledge of the groundwater problem in Big Rock Mesa, disclosure of what occurred at the meeting could only positively affect the value and desirability of properties in the area."

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 holds no regularly scheduled meetings, except when required by the Administrative Procedure Act. 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).

MAJOR PROJECTS:

DSL Merger with Banking Department Still Under Consideration. Despite the September 1991 announcement by Carl Covitz, Secretary of the Business, Transportation and Housing Agency, that DSL would be merged into the State Banking Department by June 1992, no subsequent action has been taken to authorize or facilitate that merger. *[12:1 CRLR 128]* According to a spokesperson for Covitz, the merger would reduce duplication and lower costs to the state. Although the state's plan appears to be to keep the actual examination functions and costs of the respective industries separate even after the merger, the declining number of state-chartered savings and loans may require the state to consider complete consolidation of the various regulatory activities.

SB 506 (McCorquodale), currently pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness, would require the Agency to conduct a study on the feasibility and advisability of consolidating some or all of the state's regulatory functions involving banks, savings associations, and—at the discretion of the Agency—other financial institutions; that report would be submitted to the legislature and the Governor by March 1, 1993 (*see infra* LEGISLATION).

DSL has processed no new state charter applications since 1985 and, at this writing, regulates only 41 state-chartered thrifts, compared to 158 during the mid-1980s. *[11:4 CRLR 142]*

RTC Requests More Bailout Funds. On April 1, the Resolution Trust Corporation's (RTC) statutory authority to spend money expired, leaving the agency without access to $17 billion remaining in funds previously authorized for its use by