



action immunity, on grounds their state insurance departments are authorized to regulate rates. The FTC rejected the defense, but the court of appeals reversed.

The U.S. Supreme Court reviewed the findings of the FTC's administrative law judge with regard to the insurance regulatory schemes in four states (Arizona, Montana, Connecticut, and Wisconsin), and the two-pronged test for state action immunity under *Parker v. Brown*, 317 U.S. 341 (1943), and its progeny: The state must articulate a clear and affirmative policy to allow the challenged anticompetitive conduct, and the state must provide active supervision of anticompetitive conduct undertaken by private actors. The Court held that the regulatory schemes in Wisconsin and Montana failed to afford active state supervision because, in those states, private rating bureaus establish title insurance rates and file them with the insurance regulator. Both states use a "negative option" system to approve rate filings; that is, the rating bureau files the rates, and they become effective unless the regulator rejects them within a specified time period. According to the Court, "[a]lthough the negative option system provides a theoretical mechanism for substantive review, the ALJ determined, after making detailed findings regarding the operation of each regulatory regime, that the rate filings were subject to minimal scrutiny by state regulators."

In this context, the 6-3 majority rejected the state action defense asserted by the insurance companies. "This case involves horizontal price fixing under a vague imprimatur in form and agency inaction in fact. No antitrust offense is more pernicious than price fixing. In this context, we decline to formulate a rule that would lead to a finding of active state supervision where in fact there was none" (citation omitted).

The dissent argued that the decision gives too much power to the federal courts interpreting broad antitrust concepts and judging what is and is not adequate state supervision where states authorize restraints of trade. However, the majority—in upholding the better rule—held that state authorization of serious restraints of trade allowing private parties to form cartels, fix prices, or otherwise replace or subvert the marketplace must be supervised in some minimally effective manner by a state agency substituting for the absent marketplace as appropriate.

## DEPARTMENT OF REAL ESTATE

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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 (as of September 1992, 260,133 salespersons and 115,613 brokers, including corporate officers) and subdivisions.

License examinations require a fee of \$25 per salesperson applicant and \$50 per broker applicant. Exam passage rates averaged 56% for salespersons and 48% for brokers (including retakes) during the 1991-92 fiscal year. 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 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 publishes three regular bulletins. The *Real Estate Bulletin* is circulated quarterly as an educational service to all current licensees. The *Bulletin* 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. The *Mortgage Loan Bulletin* is published twice yearly as an educational service to licensees engaged in mortgage lending activities. Finally, the *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 projects a 1992 total membership of 126,000. 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.

## MAJOR PROJECTS

**Office of Real Estate Appraisers Update.** The federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 requires all states to institute a licensing and certification program for real estate appraisers who engage in federally-related appraisal activity, which is estimated to comprise nearly 95% of all transactions. 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 the Business, Transportation and Housing Agency; OREA is not affiliated with or located within DRE. [12:2&3 CRLR 181] Although the original effective date of the program was July 1, 1991, subsequent extensions moved the effective date to July 1, 1992. Further, SB 1958 (Presley)



(Chapter 95, Statutes of 1992) changed the licensing/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. According to OREA, 7,400 individuals met the licensing requirements as of August 25; the date for implementation of the licensing requirements was thus set for November 1. Accordingly, all real estate appraisers who engage in federally-related appraisal activity must be licensed by OREA after November 1.

In April, Governor Wilson appointed Robert J. West to serve as OREA Director; West has a bachelor's degree in economics and a master's degree in business, both from Stanford University. West, who owns a commercial property appraisal business in Newport Beach, is a member of the Appraisal Institute and is active in the American Society of Appraisers.

**DRE Provides Update on Section Activities.** The Fall 1992 *Real Estate Bulletin* provides recent information regarding DRE's enforcement program, mortgage lending activities, its licensing, information systems, legal, and education and research sections, and its audit and subdivision programs. Among other things, the *Bulletin* notes the following activities:

- **Enforcement Section.** The DRE Commissioner has the statutory duty to enforce the Real Estate Law in a manner which achieves maximum protection for the purchasers of real property and those persons dealing with real estate licensees. DRE's Enforcement Section accomplishes this through investigations of consumer complaints and, when warranted, recommendations to DRE's Legal Section and the Commissioner regarding disciplinary action. During the 1991-92 fiscal year, the Enforcement Section reported receiving and screening 9,151 complaints from consumers; 4,499 of those complaints were assigned for investigation. Of the complaints investigated, DRE closed 2,859 with no discipline recommended, referred 1,362 for disciplinary action, and carried the remaining 278 over into fiscal year 1992-93. DRE filed 1,270 disciplinary actions during the 1991-92 fiscal year.

The Enforcement Section has also formulated a new policy of issuing Corrective Action Letters, which are issued to licensees who have committed technical violations, but who are offered the opportunity to bring their actions into compliance with the applicable standards. Such letters do not appear as a formal disciplinary action against licensees; ac-

ording to DRE, issuing these letters is an educational process for its licensees which fosters compliance with the Real Estate Law.

The *Bulletin* also notes that the Enforcement Section's long-range plan includes evaluating the adequacy of trust fund handling requirements for property managers, vacation rental managers, mortgage loan brokers, residential sales, and broker escrows; the need to require education on trust fund handling as a prerequisite to the issuance of a broker's license or, alternatively, a mandatory continuing education class; the feasibility of using paraprofessional class employees to perform routine investigative duties; DRE's disciplinary philosophy and the development of guidelines for consistency in penalty settlements; and the use of a voluntary surrender of license mechanism pending a disciplinary proceeding.

- **Mortgage Lending Activities Section.** This section, which is responsible for a variety of activities associated with real estate brokers engaged in the mortgage business, has recently reviewed advertising submitted on both a mandatory and voluntary basis; reviewed contracts of brokers who collect fees from principals in advance of performing the function or fee agreed upon; monitored brokers who meet a prescribed level of mortgage activity; monitored lending activity for discriminatory practices; and produced the *Mortgage Loan Bulletin*. During the 1992-93 fiscal year, the section will attempt to draft a clearer definition of the term "solicitation" as it relates to the mortgage field, promulgate regulations for a more relevant mortgage loan disclosure statement, and improve means of identifying brokers engaged in the mortgage loan business.

- **Licensing Section.** The *Bulletin* reports that DRE's licensing section, which is responsible for examinations and license issuance, experienced a downward trend in most areas of licensing during fiscal year 1991-92. Specifically, the number of salesperson examinations scheduled declined by 20% from 1990-91 figures; the number of broker examinations scheduled declined by 18%; the issuance of new salesperson licenses declined by 20%; and the issuance of new broker licenses declined 4%. DRE has awarded a research contract to Psychological Services, Inc., (PSI) to perform a re-evaluation and update of the 1987 "Job Analysis and Testing Procedures Study," in order to identify changes since 1987 in the knowledge, skills, and abilities necessary for competent real estate practice, and ensure that the real estate licensing ex-

aminations reflect these changes. PSI is expected to complete its study by summer 1993; DRE intends to evaluate and implement, as appropriate, the recommendations beginning in 1994.

- **Information Systems Section.** According to the *Bulletin*, DRE's Information Systems Section completed the reprogramming and conversion of the Department's continuing education system and subdivision tracking system to run on DRE's tandem mainframe computer. During 1992-93, the Information Systems Section will implement provisions of AB 1394 (Speier) (Chapter 50, Statutes of 1992), which provides for issuance of a 150-day conditional license if an applicant is found to be delinquent in child support payments.

- **Legal Section.** DRE reports that in fiscal year 1991-92, its Legal Section received 1,362 investigative files recommending some kind of legal action against licensees; those referrals resulted in the Legal Section's filing of 625 accusations initiating the disciplinary process to suspend or revoke licenses, and 279 statements of issues to deny applications for licensure. Disciplinary actions prosecuted by the Legal Section resulted in the revocation of 581 licenses, the suspension of 124 licenses, and the denial of 283 applications; revocations increased 10% over 1990-91 figures.

- **Education and Research Section.** This section is responsible for processing continuing education (CE) and pre-license course approval applications and activities associated with research projects funded by DRE. In fiscal year 1992-93, the Section will begin evaluating the efficiency of DRE's CE program, the appropriate direction of the Education and Research program, and requirements for pre- and post-licensing education.

- **Subdivision Program.** California's subdivision laws, which cover most lot subdivisions, various types of common interest developments (of five or more lots or units), timeshares, land projects, certain undivided interests, and out-of-state subdivisions offered for sale to California residents, seek to ensure that subdividers deliver to buyers what was agreed upon at the time of sale; before a subdivision may be marketed in California, the subdivider must obtain a public report from DRE. The *Bulletin* notes that for the third consecutive year, the number of applications for final subdivision public reports has declined. Also, SB 606 (Hill) (Chapter 947, Statutes of 1991) provided DRE with jurisdiction over timeshare projects which qualify as a "qualified resort vacation club." [11:4 CRLR 141] The Program's



main goal is to streamline the subdivision approval process.

• **Audit Program.** DRE's Audit Program is charged with performing random audits to ensure compliance with the Real Estate Law relating to recordkeeping, and supporting the Enforcement Section in the investigation of alleged violations. Long-range plans of the Audit Program include updating various audit procedures; training all audit staff to operate the new personal computers that will be procured; and, if fiscal conditions allow and approval is granted, seeking additional audit staff to assist with the rapidly expanding workload.

**Licenses Warned of Referral-for-Compensation Prohibition.** In the summer 1992 *Real Estate Bulletin*, DRE cautioned all brokers and salespersons regarding activities that violate Business and Professions Code section 10177.4 and section 2785, Title 10 of the CCR. DRE noted that many licensees have acquired ownership interests in various affiliated businesses, such as separately licensed escrow corporations, pest control firms, or home protection companies. However, section 10177.4 prohibits real estate licensees from claiming, demanding, or receiving a commission, fee, or other consideration as compensation or inducement for the referral of customers to any escrow agent, structural pest control firm, home protection company, title insurer, controlled escrow company, or underwritten title company. The *Bulletin* notes that there are certain exceptions to this rule, such as bona fide payments for goods or facilities actually furnished or services actually performed by the licensee, provided such payments are reasonably related to the value of the goods, facilities, or services furnished; documents, services, information, advertising, educational materials, or items of a like nature which are related to the services of the furnisher, such as a title company, and are customary in the real estate business, provided the furnisher does not give them to the licensee on a preferential basis; and moderate expenses for food, meals, and beverages which are provided within the context of customary business, educational, or promotional practices.

DRE acknowledged that real estate licensees are not prohibited from having ownership interests in the types of businesses listed in section 10177.4. However, section 2785(a)(19), Title 10 of the CCR, requires a licensee to disclose his/her significant interest in a particular entity when the licensee recommends the use of the services or products of such entity to his/her client.

**Brokers' Duties Regarding Mortgage Loan Compensation Disclosure Clarified.** The summer issue of the *Real Estate Bulletin* also clarified whether fees paid to brokers by lenders must be disclosed to the borrower. DRE noted that Business and Professions Code section 10240 provides that a broker acting within the meaning of Business and Professions Code section 10131(d) is required to give the borrower a mortgage loan disclosure statement unless the loan is made by a bank, trust company, savings and loan association, industrial loan company, pension trust, credit union, or insurance company and the broker's commission does not exceed 2% of the loan amount. Among other things, the disclosure statement must identify the "total of the brokerage or commissions contracted for, or to be received by, the real estate broker for services performed as an agent in negotiating, procuring, or arranging the loan..." Thus, DRE noted that the statement must include disclosure of all compensation, including compensation from the sale of the loan or release of the servicing rights.

According to DRE, even if a mortgage loan disclosure statement is not required, mortgage brokers still have a responsibility under section 2904, Title 10 of the CCR, to disclose to borrowers the form, amount, and source of all compensation received or to be received from the lender in the transaction; this includes any compensation resulting from the sale of the loan or release of the servicing rights.

**DRE Rulemaking.** At this writing, DRE is still reviewing its proposal 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. Among other things, the proposals would specify the current standards, including disclosure requirements, applicable to qualified resort vacation club projects; describe certain short-term deposits which do not constitute commingling within the meaning of Business and Professions Code section 10176(e); require any corporation which is licensed under the authority of Business and Professions Code section 10211 to remain at all times in good legal standing with the Office of the Secretary of State; and specify acceptable terms for use by real estate brokers in advertising in California for a loan secured by real property. [12:2&3 CRLR 182] On July 15, DRE released slight modifications to the proposed regulatory package; following DRE's review of public comments received, the Department will forward the rulemaking file to

the Office of Administrative Law (OAL) for review and approval.

On May 26, OAL approved DRE's adoption of sections 2708, 2709, 2724, and amendments to sections 3002 and 3011, Title 10 of the CCR. [12:2&3 CRLR 183] DRE made minor modifications to proposed new section 2792.11, regarding subdividers' obligation to pay assessments and record maintenance, and to its amendments to section 2810.1, regarding regulations applicable to timeshare projects; OAL approved those changes on September 29.

## LEGISLATION

**AB 3010 (Conroy).** Under the Subdivision Map Act, commencing at a date not less than sixty days prior to the filing of a tentative map, the subdivider or his/her agent is required to give notice, as specified, of that filing to each person applying after that date for rental of a unit of the subject property, immediately prior to the acceptance of any rent or deposit from the prospective tenant by the subdivider. This bill requires specified notices to be provided to tenants by a subdivider or subsequent project owner when a final map has been approved for a condominium project, community apartment project, or stock cooperative project in which the final map was approved on or after January 1, 1993, and the subdivider or subsequent project owner rents a dwelling on or after January 1, 1993 in that project, as specified. This bill was signed by the Governor on September 28 (Chapter 1098, Statutes of 1992).

**SB 859 (Rosenthal).** Existing law exempts from licensure as a real estate broker specified persons while engaged in certain enumerated acts. This bill exempts from certain provisions of the Real Estate Law relating to leasing or renting real property, and hence from licensure as a real estate broker, any person employed by a principal, as defined, who acts in the capacity of a film location representative, as defined, if the principal complies with certain liability insurance requirements. This bill was signed by the Governor on August 1 (Chapter 396, Statutes of 1992).

The following is a status update on bills reported in detail in CRLR Vol. 12, Nos. 2 & 3 (Spring/Summer 1992) at pages 183-84:

**AB 2583 (Johnson)** authorizes the DRE Commissioner to issue desist or refrain orders to a real estate broker who has engaged in or is engaging in an activity which is a violation of the Escrow Law and which is not exempt from the Escrow Law.

Among others, the Escrow Law does



## REGULATORY AGENCY ACTION

not apply 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. This bill provides that those exemptions are personal to the persons listed, and those persons may not delegate any duties other than duties performed under the direct supervision of those persons. The bill also provides that those exemptions are not available for any arrangement entered into for the purposes of performing escrows for more than one business. This bill also requires all written escrow instructions executed by a buyer or seller to contain a statement in specified point type which includes the license name and the department issuing the license or authority under which the person is operating; this provision, which does not apply to supplemental escrow instructions or modifications to escrow instructions, becomes operative on July 1, 1993. This bill was signed by the Governor on September 22 (Chapter 861, Statutes of 1992).

**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.) This bill changes 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 also provides 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. This bill was signed by the Governor on June 18 (Chapter 95, Statutes of 1992).

**AB 2490 (Brulte).** Existing law requires the DRE Commissioner to examine 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. This bill authorizes the Commissioner to issue a conditional public report for certain subdivisions if specified requirements are met, and establishes a fee of \$500 for an application for a conditional public report. This bill was signed by the Governor on September 22 (Chapter 860, Statutes of 1992).

**SB 1522 (Leonard)** regulates the sale

in this state of nondomestic limited market subdivisions, as defined; revises the definition of "subdivided lands" and "subdivision" to include improved or unimproved land(s), wherever situated within the United States, except for timeshare projects, in two or more distinct geographic locations; and makes it unlawful for any person to sell or lease or offer for sale or lease lots, parcels, or interests in a subdivision which would be subject to the Real Estate Law except for being located outside of the United States, unless any printed material, literature, advertising, or invitation in this state relating to that sale, lease, or offer contains a specified disclaimer. This bill was signed by the Governor on September 18 (Chapter 774, Statutes of 1992).

**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; those requirements are inapplicable to the formation of a stock cooperative or the issuance of shares or other interests therein under specified conditions. This bill repeals the exception for stock cooperatives. This bill was signed by the Governor on August 1 (Chapter 403, Statutes of 1992).

**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. This bill requires 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. This bill was signed by the Governor on July 9 (Chapter 154, Statutes of 1992).

**AB 3343 (Peace),** until January 1, 1996, authorizes a real estate broker to deposit funds received in trust when collecting payments or performing services for investors 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. This bill was signed by the Governor on July 22 (Chapter 315, Statutes of 1992).

**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. This bill eliminates the requirement for an endorsement by the DRE Commissioner and the fee provision. This bill was signed by the Governor on July 16 (Chapter 230, Statutes of 1992).

**SB 1917 (Thompson)** prohibits any person from claiming, demanding, charging, receiving, collecting, or contracting for an advance fee for soliciting lenders on behalf of borrowers in connection with loans to be secured directly or collaterally by a lien on real property, or for performing any other activities for which a license is required, unless the person is a licensed real estate broker and has complied with the Real Estate Law. The bill does not apply to the advance fees of any bank, savings association, credit union, industrial loan company, or person acting within the scope of a license issued to that person, nor does it apply to charges made by title insurers and controlled escrow companies. This bill was signed by the Governor on August 16 (Chapter 515, Statutes of 1992).

**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. This bill makes those procedures applicable to an application for issuance of a permit for a qualified vacation resort club, as defined. This bill also authorizes the Commissioner to abandon an application for a subdivision public report for failure to provide required data. This bill was signed by the Governor on September 22 (Chapter 881, Statutes of 1992).

**SB 492 (Leonard)** requires a lender in a loan transaction secured by real property to provide notice, as specified, to a loan applicant that, upon request, the applicant is entitled to receive a copy of the appraisal report, provided he/she has paid for the appraisal. This bill was signed by the Governor on September 18 (Chapter 767, Statutes of 1992).

**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. This bill additionally exempts 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. This bill was signed by the Governor on July 8 (Chapter 134, Statutes of 1992).

**AB 3469 (T. Friedman)** was amended to pertain only to savings and loan institutions (*see infra* agency report on DEPARTMENT OF SAVINGS AND LOAN).

The following bills died in committee: **AB 2154 (Hannigan)**, which would have changed the licensing/certification deadline applicable to any person who engages in federally related real estate appraisal activity, 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; and **AB 2666 (Baker)**, which would have included in an existing exemption from the definition of a real estate broker 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.

## ■ LITIGATION

On June 11, the bankruptcy reorganization plan of Pioneer Mortgage, which filed for bankruptcy in January 1991, was approved by U.S. Bankruptcy Court Judge James W. Meyers. [11:2 CRLR 127] Current Pioneer management estimates that over the next five years, investors may recover 35 cents on the dollar; an additional 15 cents on the dollar may be recovered by the investors from several civil suits against Pioneer's service providers. Approximately 2,000 investors put about \$200 million into Pioneer prior to its 1991 collapse. In addition to the civil litigation, the U.S. Attorney's Office is investigating possible criminal violations by former Pioneer executives.

## 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

**Merger Bill Vetoed By Governor.** On September 30, Governor Wilson vetoed SB 506 (McCorquodale), which would have transferred the licensing and regulatory functions of DSL, the Savings and Loan Commissioner, the State Banking Department, and the Superintendent of Banking to a newly-created Department of State Banking and Savings and Loan. [12:2&3 CRLR 185] In his veto message, Governor Wilson stated that while he supports streamlining state government, SB 506 is "seriously flawed, and will not achieve its intended goal." According to Wilson, the bill would have eliminated current authority, rules, regulations, and orders of the established departments "without proper, consistent, and well defined transfer of these authorities to the new department. The effect of this is to leave some financial institutions, such as transmitters of money orders, business development corporations, local agency securities, among others, unregulated by any state agency." The Governor added that the "underlying need to consolidate the Department of Savings and Loan with another state agency still exists. However, this consolidation must be approached with careful attention to the regulatory, operational, and technical aspects of the policy to provide regulatory protection for the citizens of California."

**HomeFed Seized by Federal Regulators.** On July 6, federal regulators seized control of San Diego-based HomeFed Bank, the eighth largest savings and loan institution in the country. HomeFed, the largest S&L to fail in United States history, is said to have lost \$1 billion since

1990 due to bad loans and foreclosed real estate. Despite this action, HomeFed remains open under the management of the Resolution Trust Corporation (RTC), the federal agency created by Congress to liquidate failed S&Ls. Although RTC and the Office of Thrift Supervision (OTS) had hoped to sell HomeFed as a less costly alternative to liquidation, RTC lacked sufficient funds to protect any prospective buyer from HomeFed's bad loans. OTS Director Timothy Ryan blamed Congress for causing HomeFed's takeover, claiming that when Congress failed to provide RTC with the additional funds it needed in order to complete the S&L clean-up, OTS was forced to seize institutions that otherwise would have been the subject of assisted sales; according to OTS, rescuing thrifts through assisted sales costs half as much as seizure and liquidation. In response to this criticism, House of Representatives Banking Committee staffers noted that RTC ran out of money because it failed to use all of the \$25 billion Congress gave the agency in late 1991; although Congress established an April deadline for using up the money, \$17 billion remained unused by RTC at that time and was thus frozen. [12:2&3 CRLR 185-86]

OTS determined that HomeFed's weak financial condition was due primarily to a high level of non-performing assets, largely the result of poor investment decisions implemented by former management. Although HomeFed Chair Kim Fletcher blamed the thrift's problems on various federal requirements, such as the strict capital regulations which were implemented in 1989, former HomeFed Corporation Director David Dunn agreed that the thrift was poorly run, adding that HomeFed "pursued growth aggressively without bringing judgment to bear on it." Further, HomeFed president Thomas Wageman has admitted that he knew at the beginning of 1992 that the S&L faced serious financial difficulties and would require federal assistance.

**FDIC Raises Premiums for Weak S&Ls.** Beginning January 1, the Federal Deposit Insurance Corporation (FDIC) will increase insurance premiums paid by S&Ls to FDIC to an average of 24 cents per \$100 of deposits. However, the healthiest, best-managed institutions will be exempt from the increase; only the country's weaker S&Ls, whose risk of failure is greater, will be subject to the increased premiums. Presently, all FDIC-insured institutions pay 23 cents in premiums for every \$100 of deposits; strong institutions—including about 60% of FDIC-insured S&Ls and 75% of FDIC-