



DOI also set up a toll-free hotline to assist consumers with questions about FGS.

On October 5, FGS filed an administrative damage claim with the Department against DOI, Roxani Gillespie, and four DOI employees, alleging that the Department's actions in setting up the hotline, disseminating "false and misleading" press releases, seeking to revoke FGS' license, and making unauthorized and improper inspections of FGS' premises are unlawful, unethical, a waste of taxpayer funds, and a violation of the anti-racketeering statutes. Such an administrative claim is required prior to the filing of a damages lawsuit against a state agency, which is expected. At this writing, DOI's lawsuit and its revocation proceeding are still pending.

On November 5, then-Commissioner Roxani Gillespie announced that the liquidation companies of the now-defunct Mission Insurance Companies had reached a settlement of all pending litigation with Underwriters Reinsurance Company, subject to court approval. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 123-24 and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 144 for background information.) Under the settlement, the parties will "run off" facultative business between the companies—that is, Underwriters would continue to make payments under its facultative certificates with Mission in the ordinary course of business, as policyholder claims are reported in the future within certain limits. Underwriters has also agreed to pay a cash commutation of its obligations under its reinsurance treaties with Mission; according to Gillespie, the overall settlement has a potential minimum value of \$42.2 million and a maximum of \$50.7 million.

Mission's reinsurers had sought removal of the pending litigation from Los Angeles County Superior Court to federal district court in New York. On November 16, Gillespie announced that the district court rejected those efforts, finding that the reinsurers' claims are receiving adequate consideration in the California proceedings.

In *AIU Insurance Co. v. Superior Court*, No. S012525, the California Supreme Court was asked to decide whether, under comprehensive general liability (CGL) insurance policies issued by insurers to FMC Corporation, the insurers are obligated to provide coverage to FMC for clean-up and other "response" costs incurred pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. section 9601 *et seq.*, and related state and federal

environmental laws. On November 15, a unanimous court declared that the cost of government-ordered clean-up of toxic wastes does constitute "damages" that are covered under the CGL policies issued to thousands of businesses over the past fifty years.

The insurance industry argued that CGL policies do not cover costs incurred pursuant to a governmental clean-up injunction; that is, the standard CGL policy—which covers "all sums which the insured becomes legally obligated to pay as damages because of bodily injury or property damage"—does not cover costs incurred due to injunctions issued in equity. Applying traditional rules of interpretation to the insurance policies, and using the "ordinary and popular sense" of words to resolve any ambiguities in favor of the policyholder, the court determined that some of the adverse orders issued in CERCLA suits will "legally obligate" FMC to pay such costs; the costs will constitute "damages" or "ultimate net loss," and such costs will be incurred because of "property damage."

## DEPARTMENT OF REAL ESTATE

Commissioner: James A. Edmonds, Jr.  
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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.

The Department primarily regulates two aspects of the real estate industry: licensees (as of July 1990, 202,408

salespersons and 98,891 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 November 1990, approximately 144,500 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.

### MAJOR PROJECTS:

*DRE Rulemaking.* On October 25, Real Estate Commissioner James Edmonds held a public hearing on numerous proposed changes to DRE's



## REGULATORY AGENCY ACTION

regulations in Title 10 of the CCR. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 125-26 for detailed background information on these proposed changes.) Although no comments were made on the majority of the proposed changes, several provisions elicited public commentary.

On behalf of the California Independent Mortgage Brokers Association (CIMBA), Dugald Gillies stated that DRE's proposed amendment to section 2834, which expands the list of the types of persons who may make withdrawals from a broker's trust account, should be made applicable to corporate brokers as well as individual brokers.

Regarding DRE's proposed changes to section 2849, the format of the Mortgage Loan/Trust Deed Annual Report, CIMBA suggested that: (1) the changes in the report format not become operative until the beginning of the first fiscal year of the licensee after the effective date of the regulatory changes, to enable licensees to begin the new reporting format with the onset of a new fiscal year, and to develop the appropriate software programs to accommodate the new format for the accumulation of data for the report; (2) definitional clarification of several terms in the new report format be added; (3) the report's requirements that an individual licensee broker must sign the statement personally and that a corporate licensee report must be signed by the designated licensed officer be changed to permit a licensee who has entered into a written agreement with the broker pursuant to section 2726, and is specifically authorized by the broker to do so, to sign the certificate on the report; and (4) footnote 1 of the new report be modified to incorporate changes made in AB 2607 (Moore), regarding the jurisdictional amount of Article 7 loans originated after January 1, 1991.

Finally, CIMBA took issue with DRE's proposal to amend section 3008, regarding acceptable continuing education (CE) courses. The Department's proposed change would delete an existing list of unacceptable CE course types and provide instead that course offerings not addressing "consumer protection," "consumer service," "ethics," or "agency" topics will not be approved. CIMBA argued that the proposed language lacks clarity and is inconsistent with legislative intent as indicated in the legislature's passage of SB 1018 (Montoya) in 1983, which requires the Commissioner to establish professional standards "which will provide a high level of consumer protection and of competence in achieving the objectives of members of

the public who engage the services of licensees."

DRE's proposed amendment to section 3007 would require applicants for approval of a CE course offering to provide DRE with information on the course sponsor's policy and procedures regarding the charging of course fees by students to credit cards, and a description of the sponsor's marketing program, including copies of materials, brochures, and pamphlets that will be used to advertise the course. Stanley Weig of the California Association of Realtors (CAR) objected to these proposed additions, on grounds that local real estate boards would be burdened by having to gather this information, and that this information is irrelevant to course content, which—according to Weig—is the thrust of section 3007. A DRE representative explained that this information is necessary, since potential CE students are often asked for their credit card numbers to guarantee the arrival of their course materials. Although students should not be charged until they receive their materials, they are frequently charged as soon as they call for information. These amendments are intended to enable students to make informed choices regarding the use of their credit card numbers.

Also at the October 25 hearing, DRE announced that it was withdrawing its proposed amendment to section 2792.22, which would have clarified the contents of the budget summary which may be provided to common interest subdivision association members in lieu of providing a pro forma operating budget. DRE believes this change is already covered by existing section 2792.17.

Following the hearing, DRE adopted the proposed regulations with no significant changes; at this writing, they are awaiting review by the Office of Administrative Law.

### DEPARTMENT OF SAVINGS AND LOAN

*Commissioner: William D. Davis*

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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 Califor-

nia Financial Code. Departmental regulations are in Chapter 2, Title 10 of the California Code of Regulations (CCR).

### MAJOR PROJECTS:

*Columbia Savings & Loan Fights for Survival.* On December 7, Beverly Hills-based Columbia Savings & Loan Association received federal approval to finance a sale of its junk bond portfolio, when the Resolution Trust Corporation (RTC) expanded the cases in which it would allow thrifts to finance the sale of "illiquid" assets. RTC has been under pressure to expedite the sale of some \$142 billion in troubled assets it holds from failed thrifts. Although Columbia has not yet been seized by the government, the RTC must approve any specific new sale proposed by Columbia.

As a result, Columbia is currently evaluating bids from four groups, including Gordon Investment Corporation, whose \$3 billion deal with Columbia for the purchase of Columbia's junk bond portfolio was rejected by federal regulators in September because Columbia had failed to seek any all-cash bids. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 128 for background information.) Although Columbia's president and chief executive officer Edward G. Harshfield believes a viable transaction is still possible, RTC's clearance may have come too late to save the thrift from regulatory takeover as recession fears have driven the market for high-risk, high-yield junk bonds down below depressed levels of the summer and early fall.

In an effort to remedy its financial woes, Columbia filed suit on December 12 in federal court against Michael Milken, nine former Drexel Burnham Lambert Inc. officials, and more than 100 Drexel-sponsored investment partnerships, seeking more than \$6 billion in damages. Columbia, once one of Drexel's largest clients, alleges that Drexel officials used manipulative, coercive, and deceptive sales practices to entice Columbia and other thrifts to purchase junk bonds. In its 176-page complaint, Columbia said it had been assured when it bought the junk bonds from Drexel that the market for these bonds would remain liquid and that Columbia would profit from its holdings. Instead, Columbia expects to lose more than \$2 billion from its junk bond investments. Columbia has also filed a bankruptcy court claim against Drexel, seeking more than \$4.5 billion in connection with junk bond losses; Drexel has about \$3 billion in assets, according to bankruptcy filings.