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

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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:

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.

Meanwhile, on October 18, Columbia shareholders filed a derivative action against Columbia directors in Los Angeles County Superior Court; this action follows a September 21 hearing at which the DSL Commissioner granted the shareholders permission to pursue the derivative action. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 128 for background information.)

Federal S&L Bailout Funding Denied by Congress. Ignoring RTC's pleas, Congress failed to allocate additional funding to continue the S&L bailout by federal regulators before it adjourned in October. The RTC had requested $40 billion to continue the bailout efforts for twelve months. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 128 for background information.) The Bush administration found emergency cash to keep the bailout efforts continuing; however, these funds are expected to run out in February or March. The administration's new interpretation of the thrift bailout law has given the RTC access to $8-10 billion to pay for closing and selling off failed thrifts, plus authority to borrow an unspecified amount for operating costs; however, this money comes too late to avoid delays to the rescue effort—delays that will add hundreds of millions of dollars to the staggering bailout bill. Congress is expected to address the funding issue again in early 1991.

Proposed Federal Regulations to Allow S&L Conversion to State-Chartered Savings Banks. On November 29, the Federal Deposit Insurance Corporation (FDIC), which insures deposits at the nation's banks and savings institutions, proposed that savings and loan institutions be permitted to convert to state-chartered savings banks. Industry experts view this proposal as another step toward industry consolidation, which would inevitably lead to the demise of savings and loan associations.

Under current law, S&Ls must invest 70% of their assets in home mortgages, which in many parts of the country are becoming less profitable as real estate values decline. On the other hand, state-chartered savings banks in many states have only a 60% mortgage lending requirement, thus allowing a greater percentage of high-risk, high-yield investments. Kathy Wedeking, spokesperson for the California League of Savings Institutions, stated that California's largest thrifts probably would not pursue a bank conversion because tax-related changes would make such a move too costly.

FDIC originally planned to adopt the proposal as an interim rule, seek comments for thirty days, then change the rule later if necessary. However, the FDIC decided to receive public comments on the proposal before adopting it as a rule. In the meantime, Office of Thrift Supervision (OTS) Director T. Timothy Ryan assured FDIC that OTS would not approve any so-called "charter flips," or conversions by savings associations to state savings banks, while comments were being sought.

LEGISLATION:

ACR 139 (Johnson) requests the Secretary of the Business, Transportation and Housing Agency to convene an interagency task force comprised of members from the Departments of Corporations, Insurance, Real Estate, Banking, and Savings and Loan and affected trade groups and associations to formulate and recommend to the legislature by December 31, 1991, whatever measures are deemed necessary to address escrow industry regulatory problems and issues. This bill was filed with the Secretary of State on September 14 (Chapter 164, Resolutions of 1990).

LITIGATION:

The unprecedented proliferation of litigation by injured investors and all types and levels of government agencies— several of which permitted the harm to occur—continues to swirl around Charles H. Keating, the now-bankrupt American Continental Corporation (ACC) owned by Keating, and the Irvine-based Lincoln Savings and Loan Association, an ACC subsidiary. In 1983-84, former DSL Commissioner Larry Taggart approved Keating's original application to acquire Lincoln, despite the fact that Keating had been cited by the Securities and Exchange Commission in 1979 for receiving illegal loans and using corporate funds for the personal benefit of insiders; and, in late 1984, approved Lincoln's request to transfer $900 million to a subsidiary a few days before a new federal rule went into effect forcing S&Ls to limit direct investments to 10% of their assets. Further, the state Department of Corporations twice authorized the sale of junk bonds by Lincoln employees to Lincoln depositors. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 117-19 and 128-29; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 135-38 and 149-50; and Vol. 10, No. 1 (Winter 1990) pp. 103 and 113-14 for extensive background information.)

OTS is pursuing its administrative action against ACC/Lincoln and Keating, which has been called "the most significant enforcement action OTS has ever undertaking" by OTS Director T. Timothy Ryan. In the proceeding, OTS has charged that Keating and five associates engaged in self-dealing and unsafe and unsound business practices; OTS seeks a record $40.9 million in restitution of funds improperly diverted from Lincoln. On November 15, OTS Administrative Law Judge (ALJ) Paul J. Clerman denied Keating's motion for stay, as well as his motion to move the hearing to Phoenix. ALJ Clerman ruled that the hearings will be conducted in the Central District of California, where Lincoln was based and where most of its investors reside, and set March 15 as a target date to start hearings on OTS' complaint.

Keating recently spent a month in jail as a result of the filing of related state criminal charges by the Los Angeles County District Attorney's Office; he was released on October 18 after a federal judge reduced his bail from $5 million to $300,000. On November 9, Los Angeles County Superior Court Judge Lance Ito set aside 22 of the 42 criminal counts, on grounds they were too vague or failed to state a violation of law. On November 19, prosecutors filed an amended indictment containing 46 counts. Judge Ito was scheduled to hold a hearing on the sufficiency of the amended indictment on January 11. The federal grand jury in Los Angeles is expected to hand down a federal indictment against Keating in the near future.

In Re American Continental Corporation/Lincoln Savings and Loan Association, No. 589302 (Orange County Superior Court), the class action filed on behalf of 23,000 investors who lost approximately $300 million in the collapse of Lincoln/ACC after purchasing now-worthless junk bonds, is now pending in an Arizona federal court with numerous other Lincoln-related civil actions. The State of California and its agencies were dismissed as named defendants in this action in May 1990. At this writing, partial settlements totalling $40 million have been negotiated and approved by the court.

People of the State of California v. ACC, the Department of Corporations' civil action against Charles Keating, American Continental Corporation (ACC), and two of ACC's top officers is still pending in federal court in Arizona. The Department charges defendants with securities fraud, fraud in application for qualification, offer/sale of unauthorized securities, and unauthorized advertising. (*See supra* agency report on DEPARTMENT OF CORPORATIONS for more information.)

On November 26, the U.S. Supreme Court heard oral argument in *United*

States v. Gaubert, No. 89-1793, in which a former savings and loan owner is seeking compensation for $25 million worth of real estate he claims he lost when his Irvine-based S&L went under and was taken over by federal regulators. Thomas Gaubert, a prominent political fundraiser who persuaded former House of Representatives Speaker Jim Wright (D-Texas) to intervene with federal regulators on his behalf, acquired a controlling interest in what later became Independent American in 1983. However, in 1986, the Federal Home Loan Bank Board ousted Gaubert from management of Independent, limited his involvement with any federally-insured thrift, and installed federal regulators to manage the thrift.

Claiming that the institution's eventual failure stemmed from the regulators' negligent management, Gaubert is suing under the Federal Tort Claims Act (FTCA) for $25 million in capital he pledged to guarantee Independent's net worth. However, the federal government—which is defending 132 similar suits-—contends that the challenged actions of the regulatory officials all fit within the discretionary function exception to the FTCA. While the district court agreed with the government, the Fifth Circuit Court of Appeals found that the actions of the federal regulators in managing the failed thrift extended beyond policy decisions into the realm of "operational" activities, which do not fit within the discretionary function exemption.

DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

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California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of government employees at the state and local levels.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140-49. It is approved and monitored by, and receives some funding from, the federal OSHA. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California government employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations. In addition to making routine investigations, DOSH is required by law to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.

The Cal-OSHA Consultation Service provides on-site health and safety recommendations to employers who request assistance. Consultants guide employers in adhering to Cal-OSHA standards without the threat of citations or fines.

The Appeals Board adjudicates disputes arising out of the enforcement of Cal-OSHA's standards.

MAJOR PROJECTS:

VDT Standards: Local Officials Give Up on Cal-OSHA and State Politicians. In spite of recommendations by its own Ad Hoc Expert Advisory Committee to adopt exposure standards for video display terminals (VDTs) in the workplace, OSB refused to adopt such standards at its June 1989 meeting, and has subsequently refused to reconsider its decision in spite of public and legislative pressure. At a time when VDT injuries are on the rise, Cal-OSHA continues to study the problem (as it has for three years). The latest legislative attempt to require Cal-OSHA to adopt VDT exposure standards—AB 955 (Hayden)—was vetoed by Governor Deukmejian in September 1990. (See CRLR Vol. 10, No. 4 (Fall 1990) pp. 130-31; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 152; and Vol. 10, No. 1 (Winter 1990) p. 115 for background information.)

This situation has forced many local officials in California to attempt to rectify the problem themselves. On December 17, the San Francisco Board of Supervisors passed an ordinance regulating the use of VDTs in the workplace; Mayor Art Agnos signed the proposal on December 27. The law covers city workers and businesses with fifteen or more employees, and requires employers to provide adjustable work stations, regular breaks, and training on the safe use of VDTs. Employers have four years to make the required changes.

In a related matter, the National Institute of Occupational Safety and Health is currently overseeing a study of VDT radiation effects. The study, which is scheduled to be released in early 1991, will attempt to answer questions about VDT radiation and its effects on workers.

OAL Again Rejects Asbestos Regulations. On October 22, the Office of Administrative Law (OAL) rejected OSB's modified version of amendments to section 5208 and its addition of new sections 1529 and 5208.1, Title 8 of the CCR, which would bring Cal-OSHA's asbestos standards in line with the current federal standards governing employee exposure to airborne asbestos fibers. OSB had modified its regulatory package after OAL initially rejected it in May 1990. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 130; Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 152; and Vol. 10, No. 1 (Winter 1990) p. 115 for background information.) In its October 22 disapproval, OAL found that OSB's rulemaking file failed to comply with the consistency and clarity standards of Government Code section 11349.1, and that OSB had failed to make changes to the text available to the public as required by Government Code section 11346.8(c).

At its November 15 meeting, OSB staff announced that the appropriate