real estate brokers, as well as persons involved in the sale, lease, or exchange of mineral, oil, and gas property. As introduced March 4, this bill would provide that for the purpose of these provisions, the term "employee" shall include independent contractors, and the term "employ" shall refer to the contractual relationship of both employees and independent contractors. The bill would also provide that all obligations created under those provisions and all regulations issued by the Real Estate Commissioner relating to employees shall also apply to independent contractors. This bill is pending in the Senate Business and Professions Committee.

AB 814 (Hauser). Existing law provides that certain provisions of the Real Estate Law do not apply to any stenographer, bookkeeper, receptionist, telephone operator, or other clerical help in carrying out their functions. As introduced February 27, this bill would provide that these provisions do not apply to any clerk or other employee of a condominium complex who is responsible for accepting or arranging reservations for transient occupancy of less than thirty days or who acts as a cashier for the collection of deposits or rental fees for transient occupancy of less than thirty days. This bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development.

AB 776 (Costa), as introduced February 26, would authorize 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. This bill is pending in the Assembly Committee on Housing and Community Development.

AB 1234 (Frazee). Under existing law, all money in the Education and Research Account in the Real Estate Fund is available for appropriation by the legislature to be used to carry out real estate laws, in the advancement of education and research in real estate at the University of California, state colleges, and community colleges, or in contracting for a particular research project in the field of real estate for the state with any university in this state accredited by the Western Association of Schools and Colleges, or with any qualified corporation or association. As introduced March 6, this bill would provide that the money is also available for appropriation in awarding research grants or fellowships in the field of real estate to any accredited university or college in this state, or to any graduate student or faculty member thereof, or to any other person residing in this state qualified to perform that research. This bill would also require the Commissioner to issue regulations to provide rules and procedures to implement this section relating to the awarding of research grants and fellowships, and would provide for the creation of an eight-member advisory committee appointed by the Commissioner to review and make recommendations concerning the awarding of grants and fellowships. This bill is pending in the Assembly Committee on Banking, Finance, and Bonded Indebtedness.

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

MAJOR PROJECTS:

Future of DSL Remains Uncertain. While DSL's short-term future remains reasonably secure, the long-term survival of DSL is questionable. DSL's proposed budget for fiscal year 1991-92 is $4.2 million and 43 staff positions. DSL relies on assessment fees it imposes upon state-chartered associations for its funding. Assessments collected in 1990-91 totalled $3.4 million, with $2.1 million projected for 1991-92. The 1991-92 budget marks the second year of decrease from the 1989-90 budget, which totalled $8.4 million and 124 staff positions. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 127 for background information.)

Mary Law, Chief Administrator of DSL, states that the long-term viability of DSL is uncertain because there is no incentive for savings and loan institutions to remain state-chartered. Before Congress enacted the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), state-chartered savings and loans had unlimited authority to invest in subsidiaries, no limitations on their activities as service corporations, and no restrictions on direct investment in real estate. With the enactment of FIRREA, new minimum capital requirements (which preempt state law) eliminate these advantages for state-chartered institutions. (See CRLR Vol. 10, No. 4 (Fall 1990) p. 5 and Vol. 10, No. 1 (Winter 1990) pp. 99-100 for background information on FIRREA.)

However, Ms. Law noted that only one S&L has converted to a federal charter since January 10, 1991. Some S&Ls have told DSL that they do not want to convert because they do not want DSL to be abolished; if it is, S&Ls will have no state option if they become dissatisfied with federal regulators. Yet, DSL is taking a wait-and-see attitude on further conversions which could occur before the July 1992 assessment. Currently, only 56 California state-chartered savings and loan associations are regulated by DSL.

While DSL waits, both the state legislature and Carl D. Covitz, the new Secretary of the Business, Transportation and Housing Agency, are examining whether DSL should be abolished or consolidated with the Department of Banking. (*See infra* LEGISLATION.)

Columbia Savings & Loan Seized by Federal Regulators. On January 25, federal regulators seized Beverly Hills-based Columbia Savings and Loan Association, the industry's biggest speculator in junk bonds. Columbia's assets at seizure totalled $6.6 billion, with $6 billion in deposits. Columbia suffered net losses of $591 million in 1989 and $782 million during the first nine months of 1990.

At the end of 1990, Columbia had junk bonds worth about $2.1 billion, which it had been trying to sell. In July 1990, Toronto-based Gordon Investment Corporation had agreed to pay $3 billion for the bonds. But federal regulators rejected the sale because Columbia would have lent Gordon 90% of the purchase price and would still be liable for losses if the bonds declined more than 10%. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 104-05 and Vol. 10, No. 4 (Fall 1990) p. 128 for background information.) The bonds were originally bought for more than $4 million.

The takeover ordered by the Office of Thrift Supervision (OTS) brings the government's junk bond holdings to more than $5 billion. That makes the United States government the largest single owner in the $200 billion-plus junk bond market.

The federal Resolution Trust Corporation (RTC) will manage Columbia until it can be dismantled or sold to new investors with government assistance. All 23 offices will continue to conduct business and deposits are still federally insured to $100,000.

S&L Losses Continue. Despite the federal government's seizure of more than 200 savings and loans in 1990, the 2,342 thrifts still outside government control at year-end lost $965 million in the final three months of 1990 and $2.41 billion for the entire year. The 1990 loss was down from $6.23 billion in 1989, largely because of the removal of 213 failed institutions by RTC. However, a 25% increase in losses from the third to fourth quarters occurred even though 39 insolvent S&Ls were seized. Private analysts attribute the industry's continued problems to the national recession, deterioration of real estate markets, and to the housing industry's slowdown.

Insolvent Lincoln Savings and Loan lost $109 million in the third quarter of 1990, making it one of the costliest S&L bailouts. The Irvine-based thrift, under regulatory control since April 1989, lost more than $400 million in the first nine months of 1990 and more than $1.4 billion since the beginning of 1989, according to OTS. At the end of September 1990, the thrift had $2.6 billion in assets and a negative net worth of $1.9 billion.

Congress Approves $30 Billion More for S&L Bailout. In early March, the United States Senate approved RTC's request for $30 billion to cover thrift losses for the fiscal year ending in September. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 105 for background information.) On March 13, the House of Representatives approved a compromise bill worked out with the Bush administration. The House approval came only 24 hours after it rejected four separate proposals for financing the bailout.

The compromise included permission for RTC to sell single-family homes to low-income families without regard to any minimum purchase price, but it omitted earlier provisions requiring RTC to set a goal of setting aside 25% of the contracts awarded for companies owned by women and minorities. The legislation sets goals for RTC in selling real estate and other assets from thrifts and in managing insolvent thrifts, and requires RTC to report on its progress before seeking more funding. Negotiators will work out minor differences between the House compromise and the version passed by the Senate.

The Bush administration sought permanent funding authority from Congress for the S&L bailout, but on February 20, the General Accounting Office (GAO), the investigative arm of Congress, said it would be a mistake to vote permanent spending powers to RTC. Instead, GAO recommended retaining a congressional control mechanism while allowing the RTC to efficiently plan its workload. GAO also reported that the S&L bailout will cost taxpayers at least $50 billion in the 1991-92 fiscal year. That figure could become much larger if the recession is more severe than current expectations.

Meanwhile, prospects for recovery of a substantial amount of money stolen or lost by the nation's failed S&L institutions are "very slim indeed," according to U.S. Attorney General Dick Thornburgh. As consolation, the Attorney General said that although most of the money is gone, more than 400 high-level defendants involved in S&L fraud have been convicted in the past two years, amounting to a 96% conviction rate.

LEGISLATION:

AB 1594 (Floyd), as introduced March 8, would repeal the Savings Association Law and abolish DSL on January 1, 1993. The bill would prohibit any savings association from doing business in this state on or after that date without a federal charter, and would require savings associations converting to a federal charter on or after January 1, 1992, to file specified evidence of the federal charter with the Secretary of State. This bill is pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness.

AB 1593 (Floyd), as introduced March 8, and *SB 506 (McCorquodale),* as introduced February 26, would both transfer the licensing and regulatory functions of DSL, the State Banking Department, and the Department of Corporations to a Department of Financial Institutions, which both bills seek to create; both bills would abolish DSL. AB 1593 is pending in the Assembly Banking Committee, and SB 506 is pending in the Senate Committee on Banking, Commerce and International Trade.

AB 1596 (Floyd). The California Public Records Act requires that records of state and local agencies be open to public inspection, with specified exceptions, including specified documents filed with state agencies responsible for the regulation or supervision of the issuance of securities or of financial institutions. As introduced March 8, this bill would delete this exception from the Act, thus subjecting these records to disclosure. This bill is pending in the Assembly Governmental Organization Committee.

SB 893 (Lockyer), as introduced March 7, would authorize the establishment of the California Financial Consumers' Association, a private, nonprofit public benefit corporation established to inform and advise consumers on financial service matters, represent and promote the interests of consumers in financial service matters, intervene as a party or otherwise participate on behalf of financial service consumers in any regulatory proceeding, sue on behalf of members in regard to any financial service matter, and take related actions. This bill would also impose campaign requirements for election of directors, including contribution and expenditure limits. The bill would require regulated financial institutions to enclose a prescribed notice in deposit account statements to consumers concerning the availability of membership in the association. This bill is pending in the Senate Banking Committee.

AB 2026 (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 introduced March 8, this bill would expand the list of criminal offenses, as specified, the violation of which subjects the violator to the forfeiture provisions.

Existing law provides that concurrent with, or subsequent to, the filing of a petition of forfeiture, the prosecuting agency may seek, and the court may grant a preliminary injunction upon notice to the interested parties and a hearing, or, in certain instances, a temporary restraining order, in order to preserve the status quo of the property alleged in the petition of forfeiture. This bill would provide that a preliminary injunction may be granted upon a reasonable attempt at notice to the interested parties, and would provide that in determining whether to issue a preliminary injunction or temporary restraining order, the court shall grant the requested relief unless the responding party can show that it is not necessary to preserve the status quo. This bill is pending in the Assembly Public Safety Committee.

LITIGATION:

Lincoln Savings & Loan Litigation. In mid-March, OTS announced that it has more than tripled, to $130.9 million, the amount of restitution it is seeking from Charles H. Keating, Jr., and six associates linked to the failure of Lincoln Savings & Loan. Last August, OTS filed a complaint against Keating seeking $40.9 million in restitution. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 105 and Vol. 10, No. 4 (Fall 1990) pp. 128-29 for background information.) The agency increased the amount sought after amending its complaint to include allegations of an illegal tax-sharing plan between Lincoln and its parent company, American Continental Corporation. A hearing on OTS' complaint was scheduled for April 29 in Los Angeles.

On January 11, Los Angeles Superior Court Judge Lance Ito threw out 12 of 46 state securities fraud counts against Charles Keating and other officials of the bankrupt Lincoln Savings & Loan. Judge Ito ruled that six counts stemming from Lincoln officials' allegedly fraudulent securities sales were "internally inconsistent." Another six counts alleging that Lincoln officials made untrue statements were dismissed because they differed in the prosecutors' amended indictment from the indictment the grand jury originally brought. Judge Ito also warned prosecutors that securities charges against Lincoln may be dismissed later, because the charges in the amended indictment differ from those voted on by the grand jury.

Deputy District Attorney William Hodgman requested reconsideration of Judge Ito's January 11 ruling. But on February 25, Judge Ito refused to reinstate five of the counts and denied the prosecution's motion for additional time to amend the other seven counts because Hodgman had not made his request to amend them within ten days of the January 11 ruling. Hodgman maintains the case is still strong, and said that in order to get the maximum penalty against the defendants (ten years in prison), he needs a conviction on only six of the remaining counts.

Meanwhile, Raymond C. Fidel, Lincoln's former President, plead guilty on March 11 to two counts of federal securities fraud in what could be a prelude to an indictment of Charles Keating on federal criminal charges. Fidel admitted he continued to supervise the sale of worthless junk bonds issued by Lincoln's parent company, ACC, even after he learned the firm was involved in risky foreign currency trading and faced sale or bankruptcy. On March 12, Fidel plead guilty on six state fraud counts resulting from the same bond sales. Keating is also named in the state case but, at this writing, he has not yet been charged under federal securities fraud statutes. According to his plea bargains, Fidel will be sentenced under federal law, with his state sentence running concurrently. Fidel will not be sentenced until the end of the criminal trials, which are expected to take at least a year. Authorities refuse to say whether Fidel will testify against Keating in either state or federal cases. (*See supra* agency report on DEPARTMENT OF CORPORATIONS for information on other litigation resulting from the Lincoln scandal.)

In *Feldman v. San Mateo Financial Corporation*, No. A049724 (Dec. 20, 1990), the First District Court of Appeal advised the state legislature to allow increased access to the corporate records of savings and loan associations. The recommendation came in a reversal of a trial court order that granted a shareholder in a parent company access to records of a subsidiary savings and loan. Although the court concluded that Financial Code section 6050 requires denial of access to the records, it commented, "In light of recent failures and costly government bailouts in the savings and loan industry, greater scrutiny [of corporate activity] by stockholders would seem to be a better legislative policy."

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 California workers.

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 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:

Excavation Standard. In October 1989, federal OSHA amended its standard concerning excavations; as amended, the standard (29 C.F.R. Part 1926, Subpart P) establishes requirements for the protection of employees engaged in excavations and is intended to increase worker safety. The revised federal standard uses performance criteria rather than specification requirements; consolidates and simplifies many of the existing provisions; adds and clarifies definitions; reformats the standard to eliminate duplicate provisions and ambiguous language; provides a consistent method of soil classification; and gives employers