



## REGULATORY AGENCY ACTION

client funds to or from individual or pooled client trust deposits with banks, and that the authorized signatures and instructions of these licensees on items deposited and transfers made to and from the trust deposit of their clients are valid. This two-year bill is pending in the Senate Judiciary Committee.

**SB 71 (Kopp)**, as amended April 15, would enact as a part of the Real Estate Law a Real Property Finance Broker Law for the purpose of regulating specified mortgage brokering activities. The bill would require a real estate broker conducting these activities to obtain prescribed certification, and certain other persons to obtain licensure from DRE to conduct these activities. This two-year bill is pending in the Senate Committee on Banking, Commerce and International Trade.

**SB 952 (Dills)**, as introduced March 8, would enact a Mortgage Loan Broker Law; establish an Office of Mortgage Loan Broker Licensure within DRE; and require the DRE Commissioner to adopt requirements for certification as a mortgage loan broker. This two-year bill is pending in the Senate Business and Professions Committee.

**SB 492 (Leonard)**, as amended April 4, would provide that the Commissioner may suspend or revoke a real estate license at any time the licensee, acting as a licensee in performing or attempting to perform any act in connection with a transaction coming within the scope of specified real estate regulations, has knowingly or willfully disregarded the instructions of a principal to protect the interests of a third party holding a junior obligation secured by property listed by the licensee, or disregarded the instructions of a principal to protect the interests of a third party that owns, holds, or claims an interest in the real property which was the subject of a transaction subject to those real estate regulations. This two-year bill is pending in the Assembly Committee on Consumer Protection, Governmental Efficiency, and Economic Development.

**AB 1593 (Floyd)**, as amended April 18, would transfer the licensing and regulatory functions of the State Banking Department, the Department of Savings and Loan, and the Department of Corporations to a Department of Financial Institutions, which the bill would create; enact a Mortgage Broker Law and transfer to the Department of Financial Institutions responsibility for regulating specified mortgage brokering activities conducted under a real estate broker's license; and require a real estate broker conducting these activities to obtain prescribed certification from

the Department of Financial Institutions. This two-year bill is pending in the Assembly Committee on Banking, Finance and Bonded Indebtedness.

**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 two-year bill is pending in the Assembly Consumer Protection Committee.

**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 two-year bill is pending in the Assembly Committee on Housing and Community Development.

**AB 1234 (Frazee)**, as amended May 14, would provide that, within the limits of the fees charged and collected under the laws regulating real estate, and within the limits of prudent administration, the Real Estate Fund shall be maintained at a level equal to DRE's projected annual budget. This two-year bill is pending in the Assembly Higher Education Committee.

### DEPARTMENT OF SAVINGS AND LOAN

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The Department of Savings and Loan (DSL) is headed by a commissioner who has "general supervision over all associations, savings and loan holding companies, service corporations, and other persons" (Financial Code section 8050). DSL holds no regularly scheduled meetings, except when required by the Administrative Procedure Act. The Savings and Loan Association Law is in sections 5000 through 10050 of the California Financial Code.

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

### MAJOR PROJECTS:

**DSL to Merge With Banking Department.** After shrinking dramatically in size and scope over the past two years, DSL will be absorbed into the State Banking Department (SBD) by the end of June 1992, according to Carl Covitz, Secretary of the Business, Transportation and Housing Agency. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 128 and Vol. 10, No. 4 (Fall 1990) pp. 127-28 for background information.)

Congress' passage of the 1989 Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), barring state S&Ls from risky investments traditionally prohibited to federal S&Ls, eliminated the advantages of a state charter. Previously, a state S&L was permitted to loan the equivalent of its net worth to one borrower and make direct investments in real estate, a boon for real estate developers; these activities are prohibited under FIRREA. Additionally, a state-chartered institution must pay yearly assessments to DSL on top of its fees to the federal government. These and other factors have caused many state-chartered S&Ls to convert to a federal charter. As of September 19, there were only 47 state-chartered thrifts left, compared with 158 during the mid-1980s.

DSL currently has about 31 employees in Los Angeles and San Francisco, down from more than 130 employees in 1987. DSL staff members, although transferring to SBD, will continue to concentrate on regulating thrifts which still retain their state charter. No layoffs are currently planned, since both agencies are funded by industry assessments.

**High Interest Rates Used to Increase Deposits in Ailing Thrifts.** The Resolution Trust Corporation (RTC), overseer of the federal government's S&L bailout, is currently operating almost 200 insolvent S&Ls. As part of its attempt to lure wealthy depositors, RTC is offering very high interest rates, apparently in violation of its own policies and without the knowledge or consent of Congress, which must appropriate taxpayer money to pay for the failures. RTC estimates that it has accepted over \$8 billion in so-called "hot money" deposits upon which above-market interest is being paid in an effort to delay or prevent the collapse of some of the S&Ls. Critics of RTC's tactics contend that "hot money" increases the government's cost of operating these S&Ls; such a maneuver is considered



to be a major factor leading to the S&L crisis; and, ultimately, this practice will increase the cost of the bailout to the taxpayer. In defense of its actions, RTC points out that the federal government does not have the funds to close all the failing institutions at once. According to one senior RTC official, its strategy "allows [RTC] to take care of the problem gradually." RTC estimates that, as of June 30, 179 of the 193 thrifts being kept open by RTC and under its control are offering above-market interest rates.

**Proposed Regulatory Changes.** In June, DSL announced its intent to amend its conflict of interest code, which is codified at section 102.300, Chapter 2, Title 10 of the CCR. Pursuant to Government Code section 87306, amended section 102.300 will designate DSL employees who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests. DSL's new conflict of interest code will conform to the model code adopted by the Fair Political Practices Commission (FPPC) (section 18730, Division 6, Title 2 of the CCR). DSL accepted public comments on its proposed regulatory changes until July 22; the proposed changes are currently pending approval by the FPPC.

#### LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 3 (Summer 1991) at pages 138-39:

**AB 697 (Lancaster).** Existing law imposes requirements relating to the sale, merger, and conversion of state banks and state savings associations, and provides that if a bank or savings association acquires any asset or liability, or becomes engaged in any activity which was permitted to the selling, disappearing, or converting savings association or bank, but which is prohibited to it, the Superintendent of Banks or the DSL Commissioner may permit a reasonable period of time, not to exceed six months, within which the savings association or bank shall divest itself of the asset, liability, or activity or conform it to law. As amended April 30, this bill increases the period of time in which a bank or savings association may accomplish the divestment or conformity to a period not to exceed twelve months. This bill also allows the Superintendent or Commissioner, on a case-by-case basis, to permit a bank or savings association a reasonable period of time in excess of twelve months upon a

specified showing. This bill was signed by the Governor on July 26 (Chapter 180, Statutes of 1991).

**AB 1304 (Lempert),** as amended July 18, amends Financial Code section 6050 to provide that the register of stockholders or members, the books of accounts, and the minutes of a savings association are subject to inspection upon written demand by any stockholder, member, or group of stockholders or members who hold of record voting shares having a cost of not less than \$100,000 or who hold of record voting shares constituting not less than 1% of the outstanding voting shares and who have been holders of record of the voting shares at least six months before making the written demand, for a purpose reasonably related to the stockholder's or member's interest, subject to specified limitations. This bill was signed by the Governor on September 30 (Chapter 458, Statutes of 1991).

**AB 938 (Speier),** as amended June 7, would have limited the fees which may be charged for dishonored checks; provided that no insufficient funds check charge shall be imposed by a financial institution if the account balance is positive after posting all items received for that business day; required specified items drawn on an account with insufficient funds to be presented at least twice before the item is returned unpaid; and provided that a financial institution is immune from liability for its failure to timely dishonor those insufficient funds checks. The bill was rejected by the Assembly on June 18.

**AB 1463 (Hayden),** as introduced March 7, and **SB 950 (Vuich),** as introduced March 8, are two-year bills which would make technical, clarifying changes in provisions specifying the maximum percentage of assets that an association chartered by this state under the Savings Association Law, including a savings bank, may invest in specified loans made for agriculture, business, commercial, or corporate purposes. AB 1463 is pending in the Assembly Committee on Banking, Finance, and Bonded Indebtedness; SB 950 is pending in the Senate Committee on Banking, Commerce and International Trade.

**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 two-year bill is pending in the Assembly Banking Committee.

**AB 1593 (Floyd),** as amended April 18, and **SB 506 (McCorquodale),** as amended April 8, are two-year bills which would both transfer the licensing and regulatory functions of DSL, the State Banking Department, and the regulation of credit unions by 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 Banking Committee.

**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 amended April 30, this bill would revise this exception and limit it to records of any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, when the records are received in confidence, are proprietary, and their release would result in an unfair competitive disadvantage to the person supplying the information or the records constitute filings or reports whose disclosure would be counterproductive to the regulatory purpose for which they are used. This two-year bill is pending in the Assembly Governmental Organization Committee.

**SB 893 (Lockyer),** as introduced March 7, would, among other things, 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 two-year 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, among other things, expand the list of criminal offenses, as specified, the violation of which subjects the violator to



the forfeiture provisions. This two-year bill is pending in the Assembly Public Safety Committee.

## LITIGATION:

In *Karoutas v. HomeFed Bank*, No. A050085 (July 23, 1991), the First District Court of Appeal recognized a common law duty requiring lenders with actual knowledge of facts materially affecting the value of property to disclose those facts to prospective bidders at a trustee's sale. HomeFed was the beneficiary under a trust deed on real property; the owners of the property subsequently defaulted. At a trustee's sale, the Karoutases purchased the property for \$155,001. Prior to the sale, the Karoutases did not and could not inspect the property; after the sale, the Karoutases discovered that soil conditions and other defects in the residence would cost in excess of \$250,000 to repair. The Karoutases filed a complaint against HomeFed for rescission, declaratory relief, fraud, and negligent nondisclosure, claiming that HomeFed knew about the defects prior to the sale. The trial court sustained HomeFed's demurrer, finding that the absence of a disclosure duty defeated all of plaintiffs' claims.

On appeal, the principal issue was whether HomeFed, given its alleged knowledge of defects in the property and residence, had a duty to disclose the defects to the Karoutases. The court readily found that, based on precedent, the facts as stated by the Karoutases are "sufficient to raise . . . a common law duty to disclose." HomeFed did not contend that the allegations failed to establish a common law duty to disclose; rather, it argued that the comprehensive nature of the nonjudicial foreclosure statutes, which do not contain a duty to disclose, precludes the court from imposing such a duty on a beneficiary. The First District rejected HomeFed's contentions, finding, among other things, that caselaw interpreting the nonjudicial foreclosure statutes does not eliminate common law duties owed to prospective bidders over and above those required by the statutes. Additionally, the court noted that the "public interest in the prevention of fraud" overcomes the public interest in the speedy disposition of property under deeds of trust.

Jury selection in *People v. Keating*, the long overdue state criminal trial of financier Charles H. Keating, began on August 6. (See CRLR Vol. 11, No. 2 (Spring 1991) pp. 129-30; Vol. 11, No. 1 (Winter 1991) p. 105; and Vol. 10, No. 4 (Fall 1990) pp. 128-29 for background information.) On July 26, Los Angeles

County Superior Court Judge Lance A. Ito decided to sever Keating's trial from that of Judith J. Wischer, after prosecutors agreed with Wischer's attorney that a joint trial might be unfair to her. Wischer was president of Keating's American Continental Corp. (ACC), the Arizona development company that owned Lincoln Savings and Loan. Her trial is expected to follow at the conclusion of Keating's trial.

Keating and Wischer are each charged with 20 counts of securities fraud in the sale of ACC bonds to purchasers who, according to the indictment, were told by Lincoln salespersons that their investments would be insured up to \$100,000 by the federal government. In fact, no such guarantee existed and more than 20,000 purchas-

ers, including many senior citizens on fixed incomes, lost an estimated \$250 million when ACC declared bankruptcy in April 1989. Keating faces up to ten years in prison if convicted on six or more of the charges.

On August 21, Judge Ito ruled that jurors will be given an aiding-and-abetting instruction, which states that in order to convict Keating, they must find that he intended to help bond salespeople make untrue statements in efforts to sell the bonds, knew bond salespeople were making untrue statements in selling the bonds, and encouraged the bond salespeople to make the untrue statements.

Opening arguments commenced on August 29; the trial is expected to continue through the end of the year.



## 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:

*Governor Appoints New DOSH Chief.* In August, Governor Wilson appointed Dr. John J. Howard of San Diego to replace Robert W. Stranberg as the chief of DOSH, Cal-OSHA's inves-