



REGULATORY AGENCY ACTION

mum loss ratios for medigap policies; and require insurers to annually file those loss ratios, passed the Assembly on June 9 and is pending in the Senate Insurance, Claims and Corporations Committee.

SCA 38 (Rosenthal), which would create the Insurance Commission with prescribed membership, powers, and duties, is still pending in the Senate Insurance, Claims and Corporations Committee.

The following bills died in committee or were dropped by their authors: *SB 1738 (Kopp)*, regarding unintentional lapse of a driver's license and penalty points in the Assigned Risk Plan; *AB 2845 (Calderon)*, which would have established a no-fault insurance program; *AB 4036 (Mojonnier)*, which would have authorized AIDS testing to determine insurability; and *AB 4460 (Connelly)*, which would have required the Insurance Commissioner to consider specified factors when determining whether a reasonable degree of competition exists within certain lines of insurance.

DEPARTMENT OF REAL ESTATE

Commissioner: James A. Edmonds (916) 739-3684

The Real Estate Commissioner is appointed by the Governor and is the chief officer of the Department of Real Estate (DRE). 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, subdivision and commercial and business brokerage. Various subcommittees also provide advisory input.

The Department primarily regulates two aspects of the real estate industry: licensees (185,878 salespersons, 89,548 brokers, 15,538 corporations) and subdivisions.

Licensee examinations require a fee

of \$25 per salesperson and \$50 per broker. Exam passage rates average 45% for salespersons and 53% for brokers. License fees for salesperson and broker are \$120 and \$165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales or leases of certain subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the "public report." The report contains various disclosure statements relating to title, encumbrances and similar information. Recent legislation mandates that a purchaser be given the latest financial report for the project in addition to governing instruments and disclosure of any delinquent assessments. The commissioner will not issue the public report if the subdivider fails to comply with any provision of subdivision law.

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 \$10.

The California Association of Realtors (CAR), the industry's trade association, is the largest such organization in the state. Approximately 105,000 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:

Regulatory Changes. On March 18, the Office of Administrative Law (OAL) approved the adoption of sections 2831.2 and 3010.5 of Title 10 of the California Code of Regulations. Section 2831.2 requires that a record of reconciliation of all trust funds received and disbursed must be maintained. Section 3010.5 con-

cerns the Commissioner's determination of qualifications for instructors of continuing education classes.

OAL also approved the amendment of numerous DRE regulations in Title 10, including changes to sections 2763 (materials that an examinee may use during the course of the license examination); 2792.16 (voting of common interest subdivision associations); 2792.17 (meeting of common interest subdivision associations); 2831 (maintenance of trust fund accounts); 2840 (Approved Borrower Disclosure Statement); 2950 (handling of escrow by a broker); 3003 (Commissioner's disapproval of continuing education course offerings); 3006 (criteria for approval of course offerings); 3007 (advertising and promotion for continuing education classes); 3008 (continuing education offerings not to be approved); 3010 (the Commissioner's withdrawal of approval for continuing education courses); 3102 (application for payment from the Recovery Account); and 3104 (service of correspondence and notices concerning the Recovery Account).

Enforcement Policy. During the spring, Commissioner James A. Edmonds, Jr., expressed his views on DRE's current enforcement policy. The Commissioner believes that the "DRE is doing the job that Governor Deukmejian expects it to do." The Commissioner also feels the DRE is providing protection for the consumer as well as service to the real estate licensees and their related industries through its "nonsense" enforcement policy.

This enforcement policy includes pursuing, as appropriate, minor violations of the law which can, and often do, lead to more serious violations. The DRE will also pursue major fraud transactions. Commissioner Edmonds has cited two major potential negative influences which must be overcome by new licensees, including the attitude that "everybody does it" and the difficulty in drawing the distinction between "spirited salesmanship and unethical or illegal practice." Commissioner Edmonds believes the California Real Estate Licensing Law and the rules and regulations are written in a practical manner, and that these negative influences will be overcome through the effective communication of these statutes and regulations.

Monitoring of Continuing Education. The DRE has released information on its Continuing Education Monitoring Program. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 83.) This program was



initiated to monitor continuing education offerings for compliance with DRE regulations. DRE employees have monitored approximately forty offerings statewide since January 1987. The monitors have paid particular attention to potential irregularities which include lack of proper attendance controls, radical digressions from the approved content of the offering, and questionable test administration procedures.

The DRE reported that of those classes monitored, the most frequently observed problems involve failure to properly verify attendee identification and failure to properly administer the closed-book final examination. Other problems include shortening the approved instruction time, observed cheating during the final examination, and extensive "sales pitches" during the approved instruction time.

When a problem is detected, the DRE normally writes a letter to the sponsor offering the course, citing the problem and requesting a response regarding the corrective actions which will be taken to prevent recurrence of the problem. In some instances the problem is directed to the appropriate DRE district office for further investigation. The DRE may decertify an offering if the sponsor does not correct the problem.

Lender Referral Fees. The real estate industry and lenders have voiced growing concern over whether real estate agents should solicit or accept fees for referring clients to lenders. The Federal Housing Administration (FHA) and the Veterans' Administration (VA) believe that the practice is illegal. However, real estate agents have expressed mixed feelings. Some realtors have described the referrals as "kickbacks," claiming that they demean the real estate industry and are costly to consumers. CAR and the National Association of Realtors are still examining the issue.

The federal Department of Housing and Urban Development (HUD) has taken the position that the Real Estate Settlement Procedures Act prohibits lenders from giving "anything of value" in exchange for referrals. However, the chief counsel for the DRE has stated that California state law does not prohibit a real estate licensee from accepting compensation from a lender for a referral if such compensation is disclosed to the client. The chief counsel did state, however, that federal law on the issue would preempt the state statute.

There is still uncertainty over whether mortgage loan activities are "home settlement procedures," as defined by fed-

eral regulations which include the anti-kickback statute. Currently there is a movement for further clarification of this issue.

LEGISLATION:

SB 2640 (Vuich), as amended April 11, would amend section 10232 of the Business and Professions Code, which requires real estate brokers intending or reasonably anticipating, during a successive twelve-month period, to negotiate twenty or more specified transactions in an aggregate amount of more than \$2 million to file specified reports to the DRE. Under this bill, the reporting requirements would be triggered if the broker expects to negotiate ten or more loans in an aggregate value of \$1 million. This bill would also impose specified penalties for late filing of reports and would provide that failure of a broker to pay such fines is grounds for license suspension or revocation. SB 2640 passed the Senate on May 27 and is pending in the Assembly Committee on Finance and Insurance.

AB 4258 (McClintock) would clarify and make more specific the exemption from the broker licensing requirements for clerical help. This bill passed the Assembly on May 12 and is pending in the Senate Business and Professions Committee.

SB 2258 (C. Green), as amended, would require that the location of existing and proposed freeways be included in the notice of intention for a subdivision, offered for sale or lease within a city or county which has adopted an ordinance making the bill applicable. The bill passed the Senate on June 9 and is pending in the Assembly Committee on Housing and Community Development.

SB 1891 (Seymour) would permit the Commissioner to require proof concerning the honesty and truthfulness of the directors or persons owning more than 10% of the stock in any corporation making application for a real estate license. The bill would also authorize license revocation or suspension for any corporate licensee or applicant if an officer, director, or person owning more than 10% of the corporation's stock has committed any acts specifically prohibited under existing law. This bill is pending in the Assembly Ways and Means Committee.

AB 981 (Cortese), as amended, provides that for purposes of approvals under the Subdivision Map Act or the Professional Land Surveyors' Act, the land surveying functions of a city en-

gineer may be performed by a city surveyor if that position is created by the local agency. Also, this bill requires the certificate for the final subdivision map to be signed, indicating the license or registration number of the registered civil engineer or licensed land surveyor approving the official map. This bill was signed by the Governor in May (Chapter 100, Statutes of 1988).

SB 1890 (Seymour) would revise the provision regarding non-transportation expenses of an inspection of an out-of-state subdivision intended to be offered for sale or lease in this state. This bill would also make sales of interests in undivided-interest subdivisions subject to a three-day right of rescission, with the owner required to inform purchasers of this right. SB 1890 has passed the Senate and is pending in the Assembly Ways and Means Committee.

The following is a status update on bills discussed in detail in CRLR Vol. 8, No. 2 (Spring 1988) at pages 89-90:

SB 2521 (Beverly), which would specify fee information required to be included in orders appointing receivers, is pending in the Senate Appropriations Committee.

AB 3027 (Lancaster), as amended, would specify maximum fees for real estate broker and salesperson licensure. The bill passed the Assembly on May 23 and is pending in the Senate Business and Professions Committee.

AB 3114 (Lancaster), which would repeal a specified prohibition involving commercial bank lending, passed the Assembly on April 17 and is pending in the Senate Committee on Banking and Commerce.

AB 2803 (Speier), requiring delivery of a loan appraisal to a loan applicant, as specified, has been dropped.

AB 2781 (Costa) has been referred to the Senate Committee on Housing and Urban Affairs.

2185 (Wright), concerning contracts for membership camping, is pending in the Senate Judiciary Committee.

FUTURE MEETINGS:

To be announced.