



Consumer Advisory Board, the Board's subcommittee studying the Department of Insurance made its preliminary report. The subcommittee, which is chaired by Richard Irmas, analyzed various reports submitted by outside independent organizations to determine whether internal improvements could be made to DOI. The subcommittee reviewed assertions made by the independent organizations to determine their legitimacy. For example, one report asserts that a "revolving door" personnel problem exists at the DOI. The subcommittee reported that no statistics are kept by DOI to either validate or invalidate this assertion. Some suggested solutions include conducting a survey to determine whether this personnel problem actually exists; further investigation of the management-level turnover rate to determine whether and how it affects DOI's efficiency; and potential sources of new employees.

A second assertion made by the reports suggests that the fines and penalties set forth in the Insurance Code for improper activities are inadequate. The subcommittee agrees that these fines should be revised upward so as to constitute a proper deterrent. The subcommittee suggested a public hearing where consumers, insurers, and others affected by and subject to the penalties and fines could discuss both the fines and the issue whether the "unfair and deceptive practices" portions of the Insurance Code are still adequate.

The third assertion discussed in the subcommittee's report addresses whether DOI has the authority necessary to maintain a viable insurance marketplace. The subcommittee suggested that vagueness in DOI's enabling statutes and in its rules and regulations "undoubtedly causes some in the industry to undertake activities not in the best interest of the insuring public because their interpretations of the Code are different from those of the DOI." The subcommittee also stated that this vagueness inhibits DOI staff from taking action against licensees acting improperly. The report asserted that although DOI should take a more active investigative and regulatory stance, "this is not possible because of the restricted budget within which the DOI now functions."

The subcommittee next asserted that DOI should become the leading educator of the public regarding insurance matters. The report suggested that DOI interpret and verify conflicting claims by insurance companies and their

critics regarding income expenses, loss ratios, and combined ratios; the DOI should also publicize the reserving practices of the various insurers and comment during DOI's review of a particular company whether the reserves are appropriate. Further, consideration should be given to the use of DOI funds to develop and implement statewide a high school level course in insurance economics.

Finally, the subcommittee stated that DOI should become more involved in the rating process. While the subcommittee would oppose the imposition of "file and use"-type rate regulation, it suggested that a two- or three-year running pure loss ratio figure in a fixed percentage range be prima facie evidence that a rate is inadequate or excessive when compared to the data upon which such rates were based.

The subcommittee studying "senior citizen gap" also made a report at the February 5 meeting. Subcommittee chair Gleason Payne is taking a "wait and see" attitude, pending state and federal legislative proposals, before initiating any subcommittee proposal.

FUTURE MEETINGS:

To be announced.

DEPARTMENT OF REAL ESTATE

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The Real Estate Commissioner is appointed by the Governor and is the Department's chief officer. 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:

Real Estate Transfer Disclosure Statement. Effective January 1, 1987, certain transferors of real property or residential stock cooperatives of four or



less units are required to provide the transferee with a real estate transfer disclosure statement, under section 1102.6 of the Civil Code. The new law requires that the disclosure statement be given whether or not a real estate licensee is involved in the transaction. The disclosure statement requirement is limited to transactions involving transfers by sale, installment land sale contracts, leases with an option to purchase, or ground leases coupled with improvements.

The seller has the responsibility to complete the disclosure statement, and a specified portion must be filled out by a real estate agent if involved in the transaction. The disclosure statement must be given to the transferee as soon as is practicable before the execution of the contract.

Several types of transfers are exempt from the disclosure statement requirement. The Department suggests that real estate licensees familiarize themselves with new Civil Code sections 1102-1102.14 to ensure compliance with the disclosure laws.

False or Misleading Advertising. In a recent *Real Estate Bulletin*, the Department has warned that false or misleading advertising could be costly and could lead to disciplinary actions. The article stresses that a real estate licensee who engages in false or misleading advertising could be subject to injunctions and civil penalties of \$2,500 for each violation under the Unfair Trade Practices Law (Business and Professions Code section 17000 *et seq.*). In addition, a real estate licensee could face suspension and/or revocation of his/her license.

The *Bulletin* recommended that real estate licensees avoid advertising which can be interpreted in several different ways; avoid "half-truths" or inflated claims; and set forth clearly any limitations or restrictions on advertised offers. Also, under *People v. Superior Court*, 96 Cal. App. 3d 181 (1979), misleading advertising caused by negligence also violates the law.

Real Estate Recovery Account. OAL has approved sections 3100 through 3109 of Title 10 of the California Administrative Code, which amend procedures for the Real Estate Recovery Account. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 71 and CRLR Vol. 6, No. 4 (Fall 1986) p. 65-66 for further information.) The Recovery Account is a separate account in the Real Estate Fund established to carry

out the provisions of Chapter 6.5 of the Real Estate Law.

LEGISLATION:

AB 486 (Frazee) changes the allocation of real estate licensing fees. The bill would reduce the current deposit of 15% of license revenue into the Education and Research Account to 8%, and would increase the percentage of licensing fees deposited into the Recovery Account from 5% to 12%.

AB 491 (Lancaster) would repeal section 10072 of the Business and Professions Code. The bill would delete the requirement that the Real Estate Commissioner execute a \$10,000 bond in order to ensure that he/she will faithfully discharge the duties of the office.

SB 360 (Craven) would provide that the members of the Real Estate Advisory Commission receive a per diem salary of \$100 per day plus actual expenses incurred while performing their duties. Currently, the members operate without compensation.

SB 376 (Maddy) would require a broker to inform individuals placing funds in escrow that they may request that the funds be placed in an interest-bearing account. Failure to inform the client of this option would be a misdemeanor.

LITIGATION:

In *People v. National Association of Realtors*, the Fourth District Court of Appeal upheld civil penalties imposed on the National Association of Realtors (NAR) and the California Association of Realtors (CAR). The penalties resulted from an antitrust suit brought eleven years ago against NAR and CAR for requiring membership in their organizations in order to gain access to multiple listing service. The appellate court held that the lower court did not abuse its discretion in imposing the penalties, noting that the penalties would effectively deter the wrongdoers.

In *Lorenz v. Sauer*, No. 85-6332, 87 DAR 374 (Jan. 15, 1987), the Ninth Circuit Court of Appeals upheld a ruling that a trustee of a bankrupt real estate company is not entitled to compensation from the Real Estate Recovery Fund, even if the trustee has been assigned the legal rights of defrauded investors.

The *Lorenz* case arose out of the financial collapse of Coastal Equities, Inc. (CEI), which purported to sell fractionalized real estate notes and trust deeds as well as interests in real estate limited partnerships. When CEI went bankrupt, Lorenz was appointed trustee of the corporation. Under Lorenz's

reorganization plan, the defrauded investors assigned all of their claims to him. Lorenz then filed a series of complaints against various former CEI salespeople who had allegedly defrauded investors. After securing judgments, Lorenz filed an application for payment of the maximum statutory amount from the Real Estate Recovery Fund pursuant to Business and Professions Code section 10471. The district court denied the application and the Ninth Circuit affirmed, on grounds that Lorenz, as trustee and assignee, was not an "aggrieved person" entitled to seek recovery from the Fund. The court agreed with the Commissioner's position that the California legislature intended recovery from the Fund only for a party who is actually injured through the fraud or misrepresentations of a licensed real estate salesperson.

RECENT MEETINGS:

At a January 16 meeting, Chief Deputy Commissioner John Liberator reported on the fiscal condition of the Department. He stated that during the first five months of the 1986/87 fiscal year, revenue to the Department decreased 20% from last year's figures. The decrease is due to a decline in the number of people taking licensing examinations.

The Department also stressed that its reserve fund is now below that considered prudent for the Department. Currently, the reserve contains \$12.7 million; the Department believes the reserve should hold \$22 million, an amount equal to the operating expenses of the Department for one year.

Assistant Commissioner of Subdivisions Martin Dingman reported on subdivision activities. The Department is experiencing a 12% increase over last year's figures in new filings for subdivisions. He also reported on the introduction of new application forms which reduce the number of pages for common interest subdivisions from 64 to 34 pages, and for standard subdivisions from 40 to 19 pages. The Department held five seminars in November to instruct the industry on the use of the new application forms.

Raymond Royce, Assistant Commissioner of the Regulatory Division, reported that at the end of December 1986, 2050 cases remained under investigation. Over the last six months, 41% of the investigations have resulted in referrals to the Department's legal counsel for formal disciplinary action.



FUTURE MEETINGS:

To be announced.

DEPARTMENT OF SAVINGS AND LOAN

Commissioner: William J. Crawford

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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 9001 of the California Financial Code. Departmental regulations are in Title 10, Chapter 2, of the California Administrative Code.

MAJOR PROJECTS:

Department Policies. The Department continues to follow its policy regarding the opening of new savings and loans institutions. (For more information, see CRLR Vol. 7, No. 1 (Winter 1987) pp. 72-73.) Very few applications for new savings and loan institutions are being approved, although applications for branch offices of existing institutions are approved with regularity.

Appraisals of Real Property. Effective September 26, 1986, Financial Code section 7500 was amended to provide that "no investment in real property or a real estate loan shall be made [by a savings association] until a qualified person or persons engaged directly by the association and approved by the board of directors have made a physical inspection and submitted to the association a fully documented appraisal of the real estate that would secure the loan or constitute the investment, or, in the case of a purchased loan, the person or persons have reviewed and approved an appraisal report in support of the loan." On December 10, the Commissioner issued a memorandum to all state savings and loan associations, stating that the amendment has elicited concern as to its effect on the ongoing relationship between associations and mortgage brokers.

The Federal Home Loan Bank Board's new section 563.17-1 of its regulations appear to give federal asso-

ciations an advantage over state associations because the rule specifies that the lender is permitted to request the appraisal through an agent, while new section 7500 does not provide such specific authority. Although section 7500 does not directly refer to the term "agent," the Commissioner stated the Department's position that an agent of the association may be permitted to request an appraisal for the association, provided the appraisal conforms to all requirements of section 7500 and the guidelines set forth in the Federal Home Loan Bank Board's Memorandum R41C.

LEGISLATION:

AB 247 (Bane) would repeal an existing provision which prohibits the sale or offer for sale to the public of any stock of a savings association without a permit from the Savings and Loan Commissioner. Additionally, existing law provides that an application to establish a branch office of a savings association may be denied on the basis of restrictions imposed by the Savings and Loan Commissioner, pursuant to

an agreement with the Federal Home Loan Bank Board. AB 247 would delete this provision. The bill was referred to the Committee on Finance and Insurance on February 9, 1987.

SB 295 (Yuich) would revise an existing provision relating to the filing of merger or consolidation agreements under the Savings Association Law. Under SB 295, the agreement and the respective certificate of each constituent association or any other corporation and of the surviving association would be filed with the Secretary of State, upon which occurrence the merger or consolidation would become effective. The bill would also require that duly appointed and qualified appraisers perform certain functions before a savings association may invest in real property or a real estate loan.

AB 469 (Calderon) would authorize a commercial bank or savings association to own or control any insurer which meets specified conditions and to participate as an underwriting member or as an investor in an underwriting member of any reciprocal or interinsurance exchange meeting specified criteria.



DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

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California's Occupational Safety and Health Administration (Cal-OSHA) is an integral part of the cabinet-level Department of Industrial Relations. It administers California's program ensuring the safety and health of California's wage-earners.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140-49. It is approved by, monitored by and receives some funding from the federal OSHA.

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 strenuous 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 alternate process would provide equal or superior safety to their employees.

The seven members of the Board are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board as 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