ers of both businesses complained that they were not receiving statutory refunds.

However, the desist and refrain orders did not address the refund problems, nor did they address the listing services' alleged use of unapproved form contracts. DRE's order to Valley Management directed that it cease to operate without a license. Valley Management does indeed lack a license, but it is also out of business—having closed in October after refusing refunds to many of its customers. The owners of Valley Management are suspected to have since opened another unlicensed listing service, Sunwest Properties, in Studio City. While DRE issued the citation to the defunct Valley Management, no citation was given to Sunwest, which is still unlicensed and actively engaged in business; DRE officials cited a heavy caseload as the cause for the delays.

The other disciplined service, Quality Rentals, is currently licensed by DRE. However, its owner previously owned Properties Unlimited, a separate unlicensed listing service that closed last summer after being named in about twenty lawsuits. DRE officials admitted that as a result of a history of illegal and unlicensed business practice, the owner should not have been granted a license for the new agency. While DRE officials could not determine a reason why the license was approved, they noted that the owner's previous licensing problem would be disclosed to any prospective consumer who calls DRE at (213) 897-3399.

DRE is expected to continue its investigation into Sunwest's activities.

OAL Approves DRE's Rulemaking Package. On December 7, the Office of Administrative Law (OAL) approved DRE's entire rulemaking package consisting of the proposed adoption of new sections 2717 and 2804, amendments to sections 2785, 2790.1, 2792.8, 2792.21, 2792.23, 3003, 3007, and 3007.6, and the repeal of section 3007.5, Title 10 of the CCR. *[14:4 CRLR 132; 14:2&3 CRLR 140–41]* Among other things, these changes:

- provide that 3% of the license fees collected by DRE will be credited to the Education and Research Account;
- increase by $100 the maximum application fee for original and renewal standard and common interest subdivision public reports;
- establish minimum standards for provisions contained in governing instruments for the administration of a homeowners' association's civil claims, for members' assent to actions by the association by ballot vote either at a meeting or without a meeting, and for maintenance or delivery by a developer of specific records and materials to the homeowners' association of a common interest development;
- establish criteria by which the Commissioner may abandon an application for a public report; and
- update references to sections of the Business and Professions Code that have been renumbered.

The new regulations became effective on January 6.

LITIGATION

On November 30, the First District Court of Appeal held that recovery of an unsatisfied judgment against a licensed real estate broker from DRE's Real Estate Recovery Account is permitted even though the judgment is the result of a settlement agreement and stipulation for entry of judgment.

In *Doyle v. Department of Real Estate*, 30 Cal. App. 4th 893, James and Alice Porsche sued Marvin Doyle, a licensed real estate broker, for fraud and deceit arising out of a real estate transaction, claiming $15,000 in damages; the case went to arbitration, and the Porsches were awarded $15,000. Doyle filed for a trial de novo, then entered into a settlement agreement under which he was to pay the Porsches $10,000 within a specified period of time in exchange for the Porsches' release. Pursuant to the agreement, Doyle executed a stipulation for entry of judgment in the amount of $15,000. The agreement provided that if Doyle failed to pay the $10,000 within the specified time, the Porsches could file the stipulation and have judgment entered in the action. Doyle failed to make the payment, and the stipulation was filed with the court and judgment entered for $15,000.

Following unsuccessful attempts to collect on the judgment, the Porsches filed an application with DRE's Recovery Account for payment of the unsatisfied judgment. The DRE Commissioner granted the Porsches' application for recovery of $15,000. Doyle petitioned for a writ of mandate or prohibition, arguing that payment out of the Recovery Account could not be based on a stipulated judgment. The trial court denied the petition.

In affirming the trial court's decision, the First District explained that DRE maintains a Recovery Account for unsatisfied judgments against licensed real estate brokers based on fraud. If payment is made from the Recovery Account, the broker's license is suspended until the broker reimburses the Recovery Account. The court further stated that Business and Professions Code section 10471, which sets forth the Recovery Account application procedure, was enacted to protect the public from losses caused by licensed real estate personnel resulting from fraud, and is meant to be construed liberally by the courts to prevent the mischief to which it is directed. The First District rejected Doyle's claim that DRE must deny any section 10471 application that is based on a stipulated judgment, noting that if the legislature had "intended that all applications for payment from the Recovery Account based on a stipulated judgment be denied by the Commissioner, it easily could have included such a requirement in the statutory scheme."

The court also held that the Real Estate Commissioner did not act in excess of his jurisdiction by considering underlying facts in determining whether the stipulated judgment in favor of the Porsches was based on fraud, for purposes of recovery from the Real Estate Recovery Account. The court noted that the Porsches set forth facts underlying their cause of action for fraud in their application to the Commissioner for recovery from the Account; the Commissioner also relied on the facts that the stipulated judgment was for the full amount sought by the Porsches in their complaint against the broker, and that the only cause of action alleged in the complaint was for fraud and deceit. The court concluded that "it is apparent that the Commissioner properly determined that the judgment in this case, though a result of a settlement agreement and stipulation for entry of judgment is 'based on fraud' as required by section 10471."

DEPARTMENT OF SAVINGS AND LOAN

Interim Commissioner:
Keith Paul Bishop
(213) 897-8202

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 is part of the larger Business, Transportation, and Housing Agency. 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). The Department, which has been recently downsized by the Wilson administration *[13:4 CRLR 128]*, now consists of four employees regulating only eleven state-chartered savings and loan institutions.

The DSL staff includes the Interim Commissioner, an examiner, a staff analyst, and a part-time assistant.

Although recent state budgets refer to DSL as the "Office of Savings and Loan," DSL is still officially a department. Its responsibilities technically include licensing, examination, and enforcement, but the trend is away from state chartering of S&L institutions, DSL no longer performs field audits of state-chartered S&Ls, and its enforcement powers have been reduced to reviewing analyses performed by the federal Office of Thrift Supervision.

LITIGATION

At this writing, the California Supreme Court is still reviewing the Second District Court of Appeal's decision in ***People v. Charles H. Keating***, 16 Cal. App. 4th 280 (1993). Keating was found guilty on 17 counts of defrauding investors by encouraging them to purchase worthless junk bonds instead of government-insured certificates; in his appeal (No. S033855), Keating contends that he never personally interacted with investors, and that criminal liability for violations of Corporations Code sections 25401 and 25540 is limited to direct solicitors and sellers. *[14:4 CRLR 135; 14:2&3 CRLR 143–44]* The action has been fully briefed; at this writing, however, oral argument has not yet been scheduled.

DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

Executive Director:
Steven Jablonsky
(916) 322-3640

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 currently comprised of occupational health representative Jere Ingram, Board Chair; occupational safety representative Gwendolyn Berman; management representative William Jackson; public member James Smith; management representative Sopac Tompkins; and labor representative Kenneth Young, Jr. At this writing, OSB is functioning with a labor representative vacancy.

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

OSB Fails to Meet Statutory Deadline for Adoption of Ergonomics Standard. In keeping with its years of refusal to adopt workplace standards to prevent cumulative trauma disorders (CDTs) (injuries caused by poor workplace design for jobs that require long periods of repetitive physical movement, such as typing or assemblyline work), OSB has now failed to comply with the legislative mandate set forth in AB 110 (Peace) (Chapter 121, Statutes of 1993), which required the Board to develop a statewide ergonomics standard by January 1, 1995. *[14:4 CRLR 136; 14:2&3 CRLR 144–45; 13:4 CRLR 115–16, 133]*

At its November 17 meeting, OSB unanimously rejected a watered-down version of section 5110, Title 8 of the CCR, the ergonomics standard it proposed in November 1993. As originally proposed, the standard would have applied to all employers and established minimum requirements for preventing and controlling exposure to the risk of developing CTDs. It would have required employers to engage in worksite evaluations of CTD risk and establish a reporting procedure which encourages employees to report CTD symptoms or CTD risk; implement engineering controls, administrative controls, and personal protective equipment as necessary to reduce or eliminate CTD risk; provide a medical evaluation at the first signs of injury; and provide two types of employee training programs (general and job-specific) on CTD prevention and detection. *[14:1 CRLR 113]* Following a