lent concealment, or even negligent concealment not related to failure to inspect. The court then held that "[i]f the use of an 'as is' clause will not protect against claims based on common law misrepresentation, *a fortiori* it will not insulate the seller from claims based on the disclosure requirements of section 1102 *et seq.*"

The Fourth District therefore concluded that it is possible for Loughrin to prevail in his contention that the purchase contract was not intended to insulate Barr from liability for misrepresentation in the preparation of the statutory disclosure form; accordingly, the court held that the question could not be decided as a matter of law, and it was error for the trial court to issue its order denying recovery under the first cause of action.

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). 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 regulates 15 state-chartered S&L institutions.

MAJOR PROJECTS

DSL Undergoes Quiet Transformation, Reduction. With hardly a word to the press or public, and in the absence of any legislative alteration of the Savings and Loan Association Law and its delegation of regulatory authority to DSL, the Wilson administration apparently closed down the Department of Savings and Loan on March 31 and created a three-person Office of Savings and Loan Administration (OSLA) comprised of an administrator, a financial analyst, and a secretary. According to the March 22 issue of *National Mortgage News*, DSL's thrift examination staff had already been completely eliminated in January, and California was no longer examining any of the 15 remaining state-chartered thrifts. In June, Governor Wilson appointed Rosendo Castillo to serve as OSLA's administrator; Castillo previously served as a mortgage loan consultant for Great Western Bank.

Although reformation of DSL into an office has been widely expected as the number of state-chartered S&Ls has declined and since the Governor vetoed SB 506 (McCorquodale) in September 1992 (which would have merged DSL into the State Banking Department *[12:4 CRLR 157]*), the Wilson administration has neither introduced legislation to amend the Savings and Loan Association Law which creates DSL nor suggested a reorganization plan to accomplish the transformation. However, the state's 1993–94 budget allocates $449,000 to the "Office of Savings and Loan"—an entity which technically does not exist in state law, and which may not legally be created through the budget bill. The $449,000 allocation represents a severe cutback from DSL's 1992–93 allocation of $3.7 million. Also in the 1993–94 budget bill, the Governor and legislature transferred over $1.9 million from the Department's special fund (funded by assessments against state-chartered institutions) to the state's general fund to help balance the budget.

In the absence of legislation creating OSLA, DSL apparently reopened as the "Department of Savings and Loan" on July 1. Castillo was replaced with Keith Paul Bishop, named by the Governor as Interim Commissioner of the Department. According to Bishop, DSL's reduced budget, which he says "reflects the reduced number of state-chartered associations, the increased federal oversight of associations and an effort to streamline government and reduce costs," has resulted in a much-reduced DSL staff and regulatory program. In addition to Bishop, DSL employs one full-time examiner, one full-time executive assistant, and a part-time executive assistant. Further, according to Bishop, "[t]he Department no longer conducts examinations of state-chartered institutions. Federal thrift regulators examine these institutions. The Department's examiner reviews the federal examination reports. In addition, state-chartered associations must seek the Department's approval prior to taking a number of actions [*e.g.*, under Financial Code section 5654], and the Department continues to review and act on these applications."

National Commission Recommends Abolition of S&Ls. On July 27, the bipartisan National Commission on Financial Institution Reform, Recovery and Enforcement, created by Congress to investigate the causes of the S&L crisis and to suggest actions to prevent its recurrence, released its findings and recommendations in a report entitled *Origins and Causes of the S&L Debacle: A Blueprint for Reform.* Among other things, the Commission's report concludes that the best way to avoid a repeat of the S&L bailout is to abolish the S&L industry, reduce federal deposit insurance coverage ("the 'necessary condition' for the debacle," according to the Commission), and consolidate financial institution regulation. The study cites ineffective government regulation as the main reason for the scandal; according the Commission, fraud or corruption accounted for only 10–15% of the S&L crisis.

The Commission was created by the Comprehensive Crime Control Act of 1990; its members were appointed by the President, the Speaker of the House, and the President Pro Tempore of the Senate. The Commission included co-chairs Andrew Brimmer, a former member of the Federal Reserve Board who heads an economic and financial consulting firm, and John Snow, Chair of CSX Corporation, an international transportation company. Other members included Elliott Levitas, a former Democratic congressmember from Georgia; Robert Litan, director of the Center for Law, Economics and Politics of the Brookings Institution; and Joseph Califano, Jr., former Democratic Secretary of Health, Education and Welfare.

The report notes that when federally chartered S&Ls were hit by the interest rate crisis of the late 1970s and early 1980s, federal regulators relaxed accounting rules to avoid closing institutions, all but eliminating net worth requirements. According to the report, states had to compete with the lax federal regulations by becoming equally permissive; to keep their S&Ls from switching to federal charters, states such as California, Florida and Texas gave their S&Ls unlimited authority to invest in just about any activity, far in excess of what federally chartered S&Ls might do. *[10:4 CRLR 1]* Further, instead of monitoring S&Ls more closely in this critical time, state and federal regulators did the opposite, according to the Commission. The Commission notes that "[r]egulators, the [Reagan] Administration, and Congress must share blame with the industry for the S&L debacle....By allowing accounting schemes that made insolvent S&Ls look healthy, by virtually abolishing net worth requirements, and by not raising red flags, regulators permitted the powerful S&L lobby to convince the public and many in Congress that the situation was under control."

The report also concludes that other factors, including the following, contributed to the S&L crisis:

–The 1981 Tax Act provided a substantial tax preference for real estate investments and helped create an unsustainable

speculative boom, in which many S&Ls took part.

–Federal and state S&L regulators were untrained to move against the abuses that eventually surfaced in the industry.

–Regulators allowed accounting practices that not only masked the extent of mounting problems, but also encouraged abuse and fraud.

–Regional factors such as the collapse of property values in the Sunbelt, particularly Texas, added to the losses.

–The Commission report also complains that the news media was "largely silent" during the period when the damage was being done.

According to the Commission, the S&L industry has no future; in fact, the Commission recommends that S&Ls cease to be separately chartered and regulated entities, and that S&Ls be converted into commercial banks. As a result, the agencies regulating depository institutions could be consolidated, and the FDIC could be made the sole federal insurer of depository institutions, and the sole federal charterer and regulator of insured depositories. Under the Commission's recommendations, the Office of the Comptroller of the Currency and the Office of Thrift Supervision would be eliminated.

Further, the Commission recommends that federal deposit insurance be strictly limited to accounts offered by entities called monetary service companies (MSCs); only MSCs would be able to offer government-insured accounts accessible for third-party transactions using checks, electronic transfers, or cash withdrawals. The MSCs would be separately capitalized, federally insured institutions authorized to invest only in short-term debt instruments for which there is an active national market (such as low-risk money market funds). The MSCs would hold reserves at the Federal Reserve and have access to its discount window. Because these new institutions would hold only highly liquid market securities, the FDIC would mark their condition to market daily, and calculate risk exposures. The MSCs would be affiliated with other financial entities, including but not restricted to banks and savings institutions, and they could share personnel and facilities.

Because the Commission places much of the blame for the S&L crisis on Congress and federal regulators, and because implementation of its recommendations would entail actions by those entities and substantial changes in the existing financial institution industry, no legislation is expected to emerge in the foreseeable future.

Congress Debates Extending Statute of Limitations for S&L Actions. The 1989 law that created the federal Resolution Trust Corporation (RTC) also established a three-year statute of limitations on bringing actions against former S&L officials for financial fraud and negligence. At this writing, Congress is—for the fourth time since 1991—considering whether it should extend the statute of limitations from three to five years. Previous attempts to extend the provision have met with significant—and successful—opposition from the S&Ls themselves, their accountants, and their insurers. The current Senate proposal under consideration would apply to any tort action; the House proposal would apply only to claims arising from fraud or intentional misconduct.

LEGISLATION

SB 202 (Deddeh). Existing law provides that no savings association or subsidiary thereof, without the prior written consent of the Savings and Loan Commissioner, shall enter into certain specified transactions. As introduced February 4, this bill would instead provide that no savings association or subsidiary thereof, without the prior written consent of the Commissioner, and except as otherwise permitted by law, shall enter into those specified transactions. *[S. BC&IT]*

SB 161 (Deddeh). Existing law requires financial institutions to furnish depositors, if not physically present at the time of the initial deposit into an account, with a statement concerning charges and interest not later than 10 days after the date of the initial deposit. As introduced February 1, this bill would instead require the statement to be furnished not later than seven business days after the date of the initial deposit. With respect to an increase in the rate of account charges or a variance in the interest rate, the bill would reduce the notice time from fifteen days prior to date of change or variance to seven business days.

The bill would also 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 agricultural, business, commercial, or corporate purposes. *[S. BC&IT]*

AB 320 (Burton). Existing law does not prescribe interest rates for bank credit card accounts, but prohibits defined usurious interest rates for any loan or forbearance made by a nonexempt lender. As introduced February 4, this bill would prescribe a maximum interest rate or finance charge which could be charged on credit card accounts issued by a bank, savings association, or credit union. Except as otherwise provided, the interest rate or finance charge assessed with respect to any account for which charges may be added by the use of a bank credit card shall not exceed an annual rate equal to 10% plus the savings account interest rate paid by the financial institution issuing the card. *[A. F&I]*

AB 1995 (Archie-Hudson), as introduced March 5, would authorize state-chartered banks, savings associations, and credit unions to restructure a loan or extend credit terms and obligations to minority or women business enterprises in accordance with safe and sound financial operations. Any loan so restructured or extended shall not be classified as delinquent, and the financial institution shall not be required to increase its reserves, or be subject to adverse regulatory action because of that loan. *[A. F&I]*

AB 1756 (Tucker), as amended June 9, would prohibit state, city, and county governments from contracting for services with financial institutions with $100 million dollars or more in assets unless those companies file Community Reinvestment Act reports annually with the Treasurer. The Treasurer would be required to annually submit a report to the legislature and to make summaries available to the public. These reports would include specified information regarding the nature of the governance of the companies, and their lending and investment practices, with regard to race, ethnicity, gender, and income of the governing boards and of the recipients of loans and contracts from the institutions. *[A. Inactive File]*

LITIGATION

On July 8, former savings and loan boss Charles Keating and his son, Charles Keating III, were sentenced following their January 1993 convictions on federal charges of racketeering, bank and securities fraud, conspiracy, and the interstate transportation of stolen goods. The elder Keating, who is already serving a ten-year state sentence for defrauding 25,000 investors out of $268 million by persuading them to buy worthless junk bonds instead of government-issued certificates, was found guilty of all 73 counts brought against him; his son was found guilty of all 64 counts brought against him. *[13:2&3 CRLR 147]* The elder Keating was sentenced to twelve years and seven months in federal prison for the racketeering and securities violations; his son was sentenced to eight years and one month.