



Cartwright Act, which prohibits and specifies civil and criminal remedies for defined acts in restraint of trade, applies (with specified exceptions) to the business of insurance with respect to all personal lines of property and casualty insurance; *AB 2470 (Wright)*, which would have required the Insurance Commissioner, in cooperation with the State Department of Banking, to annually produce a workbook for the purpose of showing changes in state law affecting insurers, agents, and brokers; *SB 709 (Stirling)*, which would have required auto insurers to pay a \$500 reward to persons who find and report to law enforcement agencies stolen vehicles covered by the insurer; *SB 795 (Deddeh)*, which would have made persons who submit false or fraudulent motor vehicle policy claims to insurers liable for twice the amount of the claims plus reasonable attorneys' fees; *SB 1144 (Robbins)*, which would have extended the prior approval requirement to rate changes imposed between now and the implementation of Proposition 103's prior approval structure; *SB 1232 (Kopp, Davis)*, which would have allowed drivers to meet the state financial responsibility requirement by selecting either conventional liability coverage or a no-fault policy created by this bill; *SB 1329 (Marks, Rosenthal)*, which would have reinstated a private third-party cause of action against an insurer for violation of the obligation of good faith dealing under the Insurance Code; *SB 1298 (Ayala)*, which would have provided that no rate for private passenger automobile insurance shall be found to be excessive if the overall rate of return for underwriting and investment is less than 10% of the premiums collected; *AB 868 (Bradley)*, which would have created an assigned risk plan for health insurance similar to the one that currently exists for automobile insurance; *AB 1156 (Bane)*, which would have prohibited, among other things, insurers from monopolizing or attempting to monopolize any class of insurance; *AB 1952 (Moore)*, which would have supplemented provisions of Proposition 103 which require casualty insurers to file an application for any rate change with the Insurance Commissioner; *AB 10 (Hauser)*, which would have created the California Health Insurance Program within the Department of Health Services; *AB 121 (Johnston)*, which would have required that every insurer who cancels or fails to

renew policies in violation of Proposition 103 must offer the insured the right to renew or reinstate the policy; *AB 243 (Calderon)*, which would have created a three-year pilot project in which DOI's Bureau of Fraudulent Claims, the Franchise Tax Board, and the Los Angeles County District Attorney's Office would cooperate in the investigation and prosecution of false or fraudulent insurance claims; *AB 249 (Floyd)*, regarding the qualifications a person must meet in order to be eligible for a good driver discount policy; *AB 263 (Floyd)*, which would have required DOI and the Department of Motor Vehicles to directly accept applications for automobile liability insurance under the state's assigned risk plan and would have prohibited those departments from charging any commission with respect to the applications; *AB 354 (Johnston)*, a modified "no-fault" bill which would have required each owner of a private passenger motor vehicle, other than a motorcycle, to maintain insurance that would provide personal injury protection benefits of up to \$15,000 actual payout per person for health care expenses; and *AB 744 (Calderon)*, which would have given California drivers a choice between obtaining traditional, liability-based policies or no-fault coverage.

LITIGATION:

On December 18 in *Allstate Insurance Co. v. Gillespie*, No. C744670, Los Angeles Superior Court Judge Miriam Vogel granted a request by Allstate to increase its CAARP premium rates by 40%. This decision was in direct conflict with a contemporaneous denial by the Commissioner of a 112% rate increase request by CAARP's governing board (see *supra* MAJOR PROJECTS). Commissioner Gillespie vowed to appeal the decision immediately.

In San Francisco Superior Court, Judge John Dearman ordered Commissioner Gillespie to prosecute errant insurance companies, and to save consumer complaints for six months. The case, *Bourhis v. Gillespie*, No. 907349, was decided in November. A petition for reconsideration was granted and resulted, on December 15, in a new ruling reinforcing the original order. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 97 for background information on the case.)

The lead plaintiff, Ray Bourhis, a candidate for Commissioner Gillespie's position in this year's election, said that

Gillespie and her department systematically destroyed thousands of consumer complaints brought against insurance companies every two months, even though as many as 80% of the claims were valid. Moreover, of the 53,000 complaints filed in 1988, DOI did not prosecute a single case.

Judge Dearman held that Gillespie failed to exercise her discretionary power to prosecute insurance companies that violate the law. In addition, he held that she and DOI had not complied with Insurance Code requirements to hold hearings in cases where consumers had registered legitimate claims against insurers. The court based its ruling on the fact that valid complaints made to DOI rose between 50-400% in the last five years but, during the same period, only three orders to show cause were issued. Judge Dearman ordered the Commissioner to begin hearings. DOI said it would appeal the decision.

An August 1988 lawsuit filed in Los Angeles Superior Court alleges that State Farm Mutual Automobile Insurance Company methodically deprives policyholders of dividends by accumulating and retaining a surplus reserve well in excess of industry standards. The lawsuit seeks \$634 million in damages and also sought an injunction preventing State Farm from using those funds to campaign against the various insurance initiatives before California voters in the November 1988 election. Injunctive relief was denied. The case, *Barnes v. State Farm*, No. CA001131, is currently involved in discovery proceedings.

DEPARTMENT OF REAL ESTATE

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

The Real Estate Commissioner is appointed by the Governor and is the chief officer of the Department of Real Estate (DRE). DRE was established pursuant to Business and Professions Code section 10000 *et. seq.*; its regulations appear in Chapter 6 Title 10 of the California Code of Regulations (CCR). 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, subdivisions and commercial and business brokerage. Various subcommittees also provide advisory input.

The Department primarily regulates two aspects of the real estate industry: licensees (as of September 1989, 234,979 salespersons, 91,365 brokers, 18,272 corporations) and subdivisions.

License examinations require a fee of \$25 per salesperson applicant and \$50 per broker applicant. Exam passage rates average 53% for salespersons and 43% for brokers. License fees for salespersons and brokers are \$120 and \$165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales or leases of most residential subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the "public report." The public report serves two functions aimed at protecting buyers of subdivision interests: (1) the report requires disclosure of material facts relating to title, encumbrances, and similar information; and (2) it ensures adherence to applicable standards for creating, operating, financing, and documenting the project. The commissioner will not issue the public report if the subdivider fails to comply with any provision of the Subdivided Lands Act.

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 \$15.

The California Association of Realtors (CAR), the industry's trade association, is the largest such organization in the state. Approximately 130,000 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 October 20, DRE issued copies of regulatory changes to new Article 6 (sections 7117 through 7122), Title 21 of the CCR, promulgated by the Secretary of the Business, Transportation and Housing Agency pursuant to section 35800 *et seq.* of the Health and Safety Code. These sections of the Code address the problem of discriminatory practices by financial institutions in financing or refinancing the purchase, construction, rehabilitation, or improvement of housing accommodations. The Code seeks to promote a healthy housing market by prohibiting the denial of such financial assistance based on conditions in a neighborhood or geographic area that are unrelated to the creditworthiness of the applicant or the value of the real property security offered.

Under Health and Safety Code section 35800 *et seq.*, the Secretary of Business, Transportation and Housing may designate the enforcement responsibilities to department(s) within state agencies that license persons or organizations engaged in a business related to or affecting the provisions of section 35800 *et seq.* Effective September 27, 1989, amended regulatory section 7117 vests in DRE the authority to enforce the Code as it applies to mortgage bankers and lenders who use their real estate licenses in connection with making financial assistance.

Amended section 7117 also defines "lender" as a person who regularly provides financial assistance and who does not report to a federal or state regulatory agency as provided by the Home Mortgage Disclosure Act of 1975 (12 U.S.C. section 2801 *et seq.*). Other changes include the following:

-New sections 7118-7120 set out compilation, itemization, and reporting requirements for loan data, including loan applications and loans made. These sections also provide certain circum-

stances under which lenders are exempt from the reporting requirements.

-New section 7121 excepts some lenders, based on income levels, from the provisions of sections 7118-7120. This section also provides that the sections do not apply to loan applications made to and loans negotiated or arranged by a person acting as a real estate broker within the meaning of section 10131(d) of the Business and Professions Code.

-New section 7122 provides that a lender who becomes subject to new Article 6 must compile application and loan data beginning with the calendar year following the year in which it becomes subject.

DRE Rulemaking. Following a public hearing on October 17, the Commissioner adopted several changes to DRE's regulations in Title 10 of the CCR. The affected sections include sections 2785 (conduct justifying license denial), 2792.20 (executive sessions of common interest subdivision associations), 2792.22 (operating budget of common interest subdivision associations), 2792.30 (alternatives to the "reasonable arrangements" required in governing instruments of common interest subdivision associations), and new sections 3050-3057 (standards for attaining minority and women business enterprise participation in DRE contracts). (See CRLR Vol. 9, No. 4 (Fall 1989) for details on these changes.) At this writing, these proposed changes are being reviewed by the Office of Administrative Law.

Disciplinary Action. DRE has recently taken disciplinary action against Andrew Wei, broker and owner of New Method Institute, a Los Angeles County real estate school. After receiving an anonymous telephone call that the school was selling pre-licensing course certificates without requiring classroom attendance, DRE assigned its investigation of the school to a Los Angeles Deputy Real Estate Commissioner.

The Deputy contacted Wei, who informed the Deputy that for \$100 he would issue the Deputy a course certificate indicating that the Deputy had passed the Real Estate Principles Course with a grade of "B". The Deputy went to the school at a prearranged time and, in exchange for \$100, received a certificate signifying completion of the course. At that time, Mr. Wei also told the Deputy that if he wanted additional certificates, he (Mr. Wei) would sell a complete bro-



kers package for \$800. Subsequent investigation of the school's records determined that approximately 200 people had purchased certificates without ever attending class.

Following its investigation, DRE revoked the school's continuing education course approval. DRE has also issued a Notice of Accusation to revoke Wei's personal real estate broker's license. Persons submitting license applications with course certificates from New Methods Institute will most likely be denied licenses. In addition, any licenses already issued and based on such certificates may be revoked following a hearing.

LEGISLATION:

The following is a status update on bills described in CRLR Vol. 9, No. 4 (Fall 1989) at page 99:

SB 910 (Vuich), which would appropriate \$730,000 from the Education and Research Account in the Real Estate Fund to DRE as an advance, repayable as specified, in order to establish a regulatory structure for the licensing and certification of real estate appraisers, is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 527 (Hannigan) would enact several provisions regarding real estate appraisers. Among other things, this bill would enact the Real Estate Appraisers' Licensing and Certification Law; authorize the Real Estate Commissioner to appoint a Real Estate Appraisal Advisory Board to assist the DRE in the administration of the act; authorize a licensed real estate broker to appraise all types of real estate and real property in this state; specify standards and procedures for licensure as a real estate appraiser and certification as a state-certified real estate appraiser; specify provisions regarding disciplinary proceedings, examinations, licensing fees, and continuing education requirements; and require the DRE to commence accepting applications for appraiser licenses and certifications on January 1, 1991, and to commence issuing those licenses and certifications on July 1, 1991. At this writing, this bill is pending in the Senate Business and Professions Committee.

AB 2242 (Costa), which would include within the list of acts requiring licensure as a real estate broker assisting or offering to assist another in filing an application for conducting a business opportunity upon lands owned by the

state or federal government, is pending in the Senate Business and Professions Committee.

SB 988 (Beverly), which would have expanded certain exemptions regarding real estate licenses, died in committee.

SB 1216 (Beverly), which would have enacted the Real Estate Appraisers Licensing and Certification Law, prohibiting a person from engaging in real estate appraisal activity without being licensed by DRE, died in committee.

AB 339 (Hauser), which would have required any person intending to offer subdivided land for sale or lease to disclose to DRE whether adjacent land is zoned for timberland production, died in committee.

LITIGATION:

In *Harrington v. Department of Real Estate*, No. F010192 (June 21, 1989), the Fifth District Court of Appeal upheld a trial court ruling affirming DRE's denial of a license application.

On May 22, 1986, appellant Robert W. Harrington applied for a salesperson's license with DRE. On September 9, 1986, DRE denied the application on two grounds. First, appellant had been previously convicted of contracting without a license and passing a worthless check, both of which DRE found are crimes of moral turpitude which bear a substantial relationship to the qualifications, functions, or duties of a real estate licensee. Second, appellant falsely answered a question on his application which sought information about previous denials, revocations, suspensions, or restrictions of professional/business licenses. In 1983, appellant had been denied a license to sell automobiles by the Department of Motor Vehicles and had instead been given a probationary license. In 1984, the Insurance Commissioner had revoked appellant's insurance sales license. Appellant failed to adequately describe these actions when responding to the above-referenced questions on the real estate sales license application.

On November 11, 1986, appellant challenged DRE's denial at a hearing before an administrative law judge (ALJ). On December 11, 1986, the ALJ issued a proposed decision and findings, upholding DRE's denial of appellant's application for a license. Subsequently, the Real Estate Commissioner adopted the proposed decision and finding of the ALJ, and denied the license.

Pursuant to Code of Civil Procedure

section 1094.5, appellant filed a writ of administrative mandamus in superior court on March 31, 1987. The court considered the entire administrative record, and the oral and written arguments of the parties. On February 29, 1988, judgment was entered in favor of DRE, denying appellant's writ in its entirety. Appellant then filed an appeal with the Fifth District. On June 21, 1989, the appellate court sustained the lower court's ruling. In its conclusion, the court noted the importance of honesty and integrity as qualifications for salesperson licensure. The court recognized that the public has a right to rely on the licensee's integrity in representing them, disclosing facts about property, and holding monies in fiduciary capacity. On September 21, 1989, the California Supreme Court ordered that the Fifth District's opinion be published.

FUTURE MEETINGS:

To be announced.

DEPARTMENT OF SAVINGS AND LOAN

Commissioner: William J. Crawford
(415) 557-3666
(213) 736-2798

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:

Proposed Regulatory Changes. In November, the Commissioner proposed to amend section 103.304, Chapter 2, Title 10 of the CCR, in order to update the statutory references within the regulation. References to repealed Financial Code sections in provisions related to acquisition of control of a savings and loan association or savings and loan holding company will be deleted and replaced with current Code sections brought about by the recodification of