judicial determination and vacated a lower court ruling to the contrary.

In *United States v. Stites*, No. 90-0391-K, fourteen attorneys were indicted by a San Diego federal grand jury on April 24 on racketeering and mail fraud charges. The group, known as "The Alliance," is charged with bilking insurance companies out of up to $50 million. The scheme was based on a 1984 appellate decision, *San Diego Navy Federal Credit Union v. Cumis Insurance Society Inc.*, which held that an insured who is sued and then becomes involved in a coverage dispute with the insurer is entitled to separate counsel at the insurer's expense. The Alliance used this ruling to create lawsuits with sham conflicts between the insured and insurer. The manufactured lawsuits were then prolonged by the attorneys for long periods of time while generating huge charges for attorneys' fees. The defendants face twenty-year prison terms, forfeiture of illegally gotten gains or fines of twice the amount of the gains if convicted on the RICO counts, as well as a $250,000 fine if found guilty of mail fraud.

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:

DRE Rulemaking. On May 9, the Office of Administrative Law approved several regulatory changes adopted by DRE in recent months. 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), and 2792.30 (alternatives to the "reasonable arrangements" required in governing instruments of common interest subdivision associations). (See CRLR Vol. 10, No. 1 (Winter 1990) p. 111 and Vol. 9, No. 4 (Fall 1989) for details on these changes.)

However, OAL rejected DRE's addition of sections 3050-3059, which would have established minority and women business participation goals for DRE's contracts, pursuant to Public Contract Code sections 10115-10115.10. OAL found that the proposed sections failed to satisfy the clarity, nonduplication, consistency, necessity, authority, and reference requirements of Government Code section 11349.1. DRE plans to hold a public hearing on the proposed regulations in October, and resubmit them to OAL following the hearing.

On March 19, OAL approved DRE's amendment to regulatory section 2746, which requires reporting of criminal convictions and of prior real or other business or professional licenses during the ten years prior to the application for a corporate real estate broker license and for reinstatement of a license. It also requests the person's social security number on a voluntary basis.

Broker Supervision Task Force. The Commissioner recently created a task force to study and make recommendations on ways to reduce causes of action against licensees. The task force concluded that many disciplinary actions can be avoided if brokers exercise adequate supervision over their salespersons. The task force made suggestions in the following areas:

-Staff Reports. The broker should require monthly reports from sales staff covering (1) trust funds received; (2) listing agreements; (3) transactions closed; (4) escrows opened; and (5) compensation received.

-Broker Availability. The broker or someone qualified to review and initial documents pursuant to regulatory section 2725 (failure of broker to review and initial agreements) should be reasonably available in the office to answer questions and resolve problems relating to ongoing transactions, as needed.

-File Review. The broker may want to install a regular system of reviewing files to ensure that appropriate documents are being reviewed and initialed per section 2725.

-Document Review. The broker should institute procedures to ensure that persons assigned responsibilities under the broker know and understand the scope of the delegated authority, and the documents which must be submitted to the broker by the salesperson for review.

Broker-Escrow Audits. DRE's Southern Regional Area Audit Section recently conducted audits of thirty brokers. The sample represented brokerages known to handle escrows (broker-escrows).

The results of the audits showed 86% of those reviewed were in violation of the Real Estate Law or of a regulation of the Commissioner. The violations included inadequate handling of trust fund accounts, recordkeeping violations, failure to provide closing statements, failure to advise parties that the licensee has an interest as a stockholder, and failure to review instruments.

As a result of these findings, formal action was recommended against sixteen of the brokerages. Letters requesting corrective action were sent to ten other licensees. In addition, DRE doubled its goal of broker-escrow audits for fiscal year 1989-90.

Regulatory Section Activities. DRE's regulatory section has the responsibility of enforcing the Real Estate Law and the Commissioner's regulations. DRE's largest expenditure is in this area. Deputy Commissioners investigate allegations against licensees brought to DRE by the public; in addition, they initiate their own investigations of licensees.

Approximately 320 investigations are initiated each month, one-third of which are referred to DRE's legal department for action. Once referred, the legal department begins proceedings to revoke or suspend the licensee's license.

DRE's six-member Crisis Response Team (CRT) is a special unit of the Regulatory Section. Its function is to serve as a first-strike team, responding immediately when a major scam is suspected or when an investigation involves several investigatory jurisdictions. The team was established in 1984.

Real Estate Recovery Fund. DRE maintains a recovery fund with an annual budget of $2,000,000. The purpose of the fund is to compensate members of the public who have been defrauded by real estate licensees, or have judgments against said licensees and cannot recover on the judgments.

The figures for the period of July 1989-January 1990 are as follows: 49 new claims were filed during the period; 36 claims have been paid (this figure includes claims made prior to July 1989) totalling $744,116; and 41 claims have been rejected (this figure includes claims made prior to July 1989).

LEGISLATION:

AB 2728 (Lancaster), which has been signed by the Governor (Chapter 157, Statutes of 1990), revises the definition of "supervised financial institution" for purposes of the AB 438 (Lancaster) (Chapter 188, Statutes of 1989) exemption of these entities (such as banks, credit unions, industrial loan companies, and saving associations) from the variable rate mortgage provisions of Civil Code section 1916.5. The bill also provides that it applies to any security document or evidence of debt issued on or after January 1, 1990.

AB 3238 (Lancaster), as amended May 30, would provide that an industrial loan company may make loans secured by first trust deeds on real property containing single family or one to four residential units, provided that the repayment period for each loan does not exceed 40 years and 30 days from the date the loan is made by the company. In addition, the bill would provide that all loans with repayment periods in excess of 30 years and 30 days shall not exceed in the aggregate 5% of all outstanding loans and obligations of the company. This bill is pending in the Senate Banking and Commerce Committee.

SB 2577 (Kopp), as amended May 1, would provide that all of the property taxes on real property for the fiscal year are due on November 1, half of which would be payable on November 1 and the other half on February 1. It would make similar changes with respect to those counties electing to collect all property taxes on the secured roll in equal installments. This bill also requires a seller of real property to disclose whether or not property taxes are due, payable, or delinquent on the subject property. This bill is pending in the Assembly Revenue and Taxation Committee.

SB 2641 (Torres), as amended May 7, would provide that any representations made by any individual or group of individuals, as defined as specified below, to the equity seller concerning an equity purchase or to the owner concerning a residence in foreclosure shall be binding upon the equity purchaser or foreclosure consultant, respectively, and the equity purchaser or foreclosure consultant shall be liable for all civil damages caused by the representations or by their conduct. Further, the equity seller or the owner would be entitled to bring a civil action, as specified, regarding the liability of the equity purchaser or the foreclosure consultant. The bill would define "any individual" to mean an agent or employee (or both) of the equity purchaser or foreclosure consultant who is acting within the course and scope of employment or agency and with the full knowledge and consent of the equity purchaser or foreclosure consultant; and would require any such individual to provide certain proof of licensure and bonding as specified.

This bill would also provide that any provision in a contract, entered into on or after January 1, 1991, that attempts or purports to limit the liability of the equity purchaser or the foreclosure consultant is void and, at the option of the equity seller or owner, the equity provision contract or the foreclosure sale contract, respectively, is void only upon grounds as exist for the revocation of any contract. This bill would specify that an order summarily adjudicating civil liability or agency shall not constitute a finding of criminal liability for the purpose of any criminal prosecution brought under these provisions. This bill is pending in the Assembly Judiciary Committee.

SB 2767 (Royce). Existing law provides that a power of sale for real property under a mortgage or deed of trust shall not be exercised until the trustee, mortgagee, or beneficiary first files for the record, in the appropriate office of the county recorder, a notice of default which contains specified information. As amended May 22, this bill would require that the notice of default also identify the name or names of the last known owner or owners, if the beneficiary is aware of a transfer of ownership. This bill would also provide that the mortgagee, trustee, or other person authorized to record the notice of default shall also within ten days following recordation of the notice of default post or cause to be posted on the property and in the prescribed place and manner a copy of this notice. This bill is pending in the Assembly Judiciary Committee.

AB 1825 (Areias), as amended May 29, would establish a statewide program for the purpose of assisting persons whose homes are in the process of being foreclosed as a result of a natural disaster proclaimed by the Governor as a state of emergency. It would authorize the director of the Department of Housing and Community Development (HCD) to establish the Natural Disaster Victim Foreclosure Assistance Program,

to be administered by HCD. The bill would create the continuously appropriated California Disaster Emergency Mortgage Assistance Fund to support the program. The fund would be available for expenditure by HCD pursuant to the bill and would contain monies appropriated by the legislature and repayments received from mortgagors. This bill is pending in the Senate Appropriations Committee.

AB 2755 (Areias), as amended May 30, would authorize the California Housing Finance Agency to establish, conduct, and administer a reverse mortgage insurance program for the stated purpose of inducing private lenders to provide reverse mortgages for senior citizens, based upon certain legislative findings and declarations, and legislative statements or program objectives. The bill would provide for third-party counseling of homeowners on specified topics prior to submission of their applications for reverse mortgage loans. This bill, as amended May 30, was introduced before the Senate on June 12.

AB 2944 (Clute), as amended May 16, would require that an owner of a mobile home park who enters into a written listing agreement with a real estate broker, as defined, for the sale of a park, or who offers to sell the park to any party, provide written notice that the park is for sale by first-class mail or personal delivery to the president, secretary, or treasurer of any resident organization, as defined, not less than 30 days nor more than one year prior to entering into the written listing agreement or offering to sell the mobilehome park. This bill is pending in the Senate Committee on Housing and Urban Affairs.

AB 3071 (Lewis), as amended April 17, would provide the Real Estate Commissioner with additional time to review and approve specified materials, including forms, letters, and advertisements used by mortgage loan brokers to obtain advance fee agreements. The bill also defines "sale", "resale", and "exchange", for the purpose of defining a real estate broker, to include every disposition of any interest in a real property sales contract or promissory note. Further, it would require applicants for the real estate salesperson examination to take a class in real estate principles from an accredited college or its equivalent, or be a member of the State Bar of California. This bill is pending in the Senate Business and Professions Committee.

AB 3183 (Bader). Existing law authorizes a person licensed as a real estate broker to sell or offer to sell, buy or offer to buy, solicit prospective purchasers of, solicit or obtain listings of, or negotiate the purchase, sale, or exchange of any mobilehome only if the mobilehome has been registered under the Mobilehomes-Manufactured Housing Act of 1980 for at least one year. This bill would delete the requirement that the mobilehome be registered for at least one year under that Act. This bill is pending in the Senate Committee on Housing and Urban Affairs.

AB 3332 (Peace), as amended May 16, would prohibit a mobilehome park owner from accepting an offer to purchase the park unless the park owner gives written notice to any resident organization, as specified, and provides the residents of the park ten days from the date of their receipt of the required notice to make an offer to purchase the park. This bill is pending in the Senate Committee on Housing and Urban Affairs.

AB 3594 (Speier), as amended April 30, would make it grounds for the revocation or suspension of a license for a real estate licensee acting as an agent for the buyer to fail to disclose his or her direct or indirect ownership interest in any property, as specified, to the buyer. The bill, which would also state legislative intent, is pending in the Senate Business and Professions Committee.

SB 2022 (Doolittle), which has been signed by the Governor (Chapter 144, Statutes of 1990), requires that an owner, subdivider, or agent of a common interest development give a prospective purchaser, prior to execution of a binding contract or agreement for the sale or lease of any lot or parcel in a subdivision, a public report of the Real Estate Commissioner concerning the subdivision and a copy of the statement of common interest development general information. The bill also corrects an obsolete reference to financial and related statement requirements.

SB 2380 (Presley), as amended May 17, would require the Office of Real Estate Appraisers to be created by *AB 527 (Hannigan)* to conduct a study on the feasibility of requiring all persons who perform or issue applications to be licensed. The bill would also require the Office to report to the legislature the results of that study on or before January 1, 1992. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

SB 2397 (Craven). Existing law requires an appraisal of each parcel of real property which relates to a real property security agreement to be made by a real property securities dealer or an independent appraiser, unless the purchase of the obligation indicates on a specified form that he/she will obtain his/her own appraisal. As amended April 30, this bill would require the appraisal to be made unless the purchaser states to the dealer in writing that he/she will obtain his/her own appraisal and would require a copy of an appraisal made by the dealer or his/her agent be delivered to the purchaser prior to the time the purchaser becomes obligated. This bill is pending in the Assembly Finance and Insurance Committee.

SB 2491 (Vuich). Under existing law, real estate brokers engaging in certain activities with respect to transactions involving the sale of real property sales contracts or debt instruments secured by real property, and meeting prescribed additional criteria, are subject to special requirements as to advertisements, reporting, trust funds, and disclosure. Among these additional criteria is that the aggregate amount of subject transactions total more than $2,000,000 in any twelve-month period. Certain of these transactions, however, are not counted for purposes of the above total, including loans made or purchased by specified entities. As amended June 4, this bill would, for this purpose, additionally exclude loans made or purchased by, among others, personal property brokers, commercial finance lenders, and consumer finance lenders. This bill is pending in the Assembly Finance and Insurance Committee.

The following are bills previously reported in CRLR Vol. 10, No. 1 (Winter 1990) at page 112:

AB 527 (Hannigan), as amended June 13, would enact the Real Estate Appraisers' Licensing and Certification Law and create the Office of Real Estate Appraisers within DRE, to be administered by a director appointed by the Governor. The bill would authorize the appointment of a Real Estate Appraisers' Advisory Committee; and specify standards and procedures for licensure as a real estate appraiser and certification as a state-certified real estate appraiser. This bill is pending in the Senate Appropriations Committee.

SB 910 (Vuich), as amended May 16, 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. It would become operative upon the chaptering of *AB 527 (Hannigan)*. The bill, which would take effect immediately as an urgency statute, is in the Senate reading file.

AB 2242 (Costa), as amended May 2, would exempt from the definition of a real estate broker any employee of the property management firm retained to manage a residential apartment building or complex or court, when performing specified functions under the supervision and control of a broker of record who is the employee of that property management firm or a salesperson licensed to the broker who meets requirements specified by the Real Estate Commissioner. This bill is pending in the Senate Business and Professions Committee.

FUTURE MEETINGS:
October 2 in Los Angeles.

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:

DSL Itself Insolvent? Like many of its licensees, DSL is facing a serious financial crisis. In February 20 testimony before the Assembly Finance and Insurance Committee, DSL attorney Shirley Thayer warned that the Department's budget is rapidly shrinking as a result of the continuing decline in industry fees paid to the Department since the enactment of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 99-100 for background information.) The Department does not receive general taxpayer funding; instead, it relies on assessment fees it imposes upon state-chartered associations. Smaller associations are assessed a flat fee of $20,000, while larger associations are assessed a percentage of their assets.

The primary advantages of being state-chartered were that state-chartered S&Ls had unlimited authority to invest in subsidiaries, no limitations on their activities as service corporations, and no restriction on direct investment in real estate. However, with the enactment of FIRREA, the federal government imposed new minimum requirements for all S&Ls which preempt state regulations, effectively eliminating the aforementioned advantages for state-chartered institutions. As a result, many large state-chartered associations have been converting to federal charters to avoid the assessment fees charged by DSL to state institutions. Many state S&Ls have either failed or merged with other financial institutions such as banks when they are unable to meet the new investment and capital requirements imposed on all S&Ls by FIRREA. According to Thayer, the Department's budget is evaporating and all employees at the Department have been placed on a hiring list in order to be considered for employment in other state agencies and departments.

The Federal S&L Crisis Continues. The S&L bailout is continuing to cost taxpayers $14 million per day. L. William Siedman, chair of the federal Resolution Trust Corporation (RTC), in January 24 testimony before the House Banking Committee, indicated that the RTC must borrow an additional $55-$100 billion—in additional to the $50 billion Congress has already allocated for the year—in order to provide enough "working capital" to finance the early takeover of insolvent S&Ls before losses escalate. RTC was created in FIRREA to close down and sell the assets of the nation's failed S&Ls, under management of the Federal Deposit Insurance Corporation (FDIC). (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 112-13 for background information.)

Members of Congress, however, are concerned that such borrowing would constitute an "off-budget" solution that will allow the Bush administration to bypass the Graham-Rudman deficit reduction law, as well as give regulators massive sums of money without effective legislative control. The Bush administration has still not proposed an alternative means to deal with the year-to-year fluctuations resulting from the need to pay off depositors of failing S&Ls before the money can be recouped by selling the assets of those institutions.

In other developments, Siedman also recently proposed that the government consider keeping open those S&Ls which have some hope of survival, rather than taking them over, because the cost of selling them off goes up rapidly after the government has taken them over. The RTC is currently conducting a feasibility study.

Additionally, M. Danny Wall, chair of the Office of Thrift Supervision (OTS)—the new federal regulator of S&Ls under FIRREA, resigned on December 4, 1989, amid mounting controversy over his handling of the Lincoln Savings and Loan Association collapse. The Senate Ethics Committee continues to investigate five U.S. senators, including California's Alan Cranston, for possible violation of conflict of interest rules in their dealings with Lincoln Savings' Charles Keating. (*See infra* for details.)

Meanwhile, fraud is emerging as an important theme in the S&L crisis. The FBI is currently investigating 530 failed institutions in an effort to trace responsibility for the collapse of the S&L industry, and has reportedly identified a pervasive pattern of fraudulent lending activity and insider abuse. On April 10, the U.S. Department of Justice announced that it plans to exercise its option to freeze the assets of S&Ls and S&L officers accused of fraud. FIRREA authorizes such action, but the provision is not retroactive; therefore, the fraud or other wrongdoing must have been committed after the bill became law. Thus far, the Justice Department has found "no appropriate cases," but it is now exploring the possible use of the device to prevent assets from being dissipated as criminal and civil cases make their way through the legal system.

The Bush administration recently overcame a serious court challenge to the entire S&L bailout process with the appointment and confirmation of T. Timothy Ryan as the new director of OTS. In early March, a U.S. District Court had ruled that the process for appointing the OTS director, as provided in FIRREA, was unconstitutional. The court found that since the director was appointed unconstitutionally, he had no authority to order the seizure of an S&L. The ruling came on the same day the government announced plans to dramatically increase the pace of the bailout by selling or closing 140 institutions by the end of June. While the immediate effect of the ruling was to bar OTS from taking control of an Illinois S&L, the flood of similar lawsuits filed over the next few weeks created such a state of uncertainty that the bailout process was virtually brought to a standstill. The delay in taking over S&Ls caused by the court ruling was estimated to cost at least $29 million per day.