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.

A federal appeals court, in a preliminary ruling several days later, stayed the injunction ordered by the district court and allowed OTS to seize the Illinois S&L. The court, however, prevented OTS from liquidating any of the S&L's assets until there could be a ruling on the issue of the constitutionality of the director's appointment.

In response to the suit, President Bush immediately appointed T. Timothy Ryan, a former Labor Department official, as director of OTS, and submitted the nomination for confirmation by the Senate in an attempt to preempt any claims of unconstitutionality in the appointment. The position had been left vacant since Wall resigned under pressure in December 1989. Despite serious concerns that Ryan has no formal experience in the banking or savings industries, he nevertheless won confirmation in the Senate by a 62-37 vote after intense lobbying by the administration.

At the national level, the S&L industry recorded a net loss of $6.5 billion for the fourth quarter of 1989, up from a $4.9 billion third-quarter loss. Overall, losses in 1989 increased by 43% to a record $19.2 billion, up from posted losses of $13.4 billion in 1988. Of 2,878 S&Ls insured by the federal government, 2,597 were not under OTS control at the end of 1989. Of S&Ls not taken over by the OTS, 70% enjoyed net earnings of $1.3 billion in the fourth quarter of 1989, but the remaining 30% reported losses of $3.4 billion for a net loss of $2.1 billion in the fourth quarter. However, the bulk of these losses were in non-operating losses, reflecting to some degree the fact that S&Ls have been selling assets, including junk bonds, and making provisions for loan losses in an effort to meet the new capital requirements and other restrictions imposed by FIRREA.

Lincoln Savings Litigation. While small investors and taxpayers continue to shoulder the burden of the disastrous $3.2 billion failure of Lincoln Savings and Loan Association, the debacle appears to be shaping up as a windfall for at least one class of individuals—attorneys. The scandal has generated a flood of litigation. At this writing, seventeen civil lawsuits naming more than twenty defendants have been filed in federal and state courts by attorneys representing various bondholders who lost money to Lincoln and American Continental Corporation (ACC), Lincoln's now-bankrupt parent company. The defendants include Lincoln's owners and their accounting and law firms. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 113-114 and Vol. 9, No. 4 (Fall 1989) for background information on the Lincoln Savings scandal.)

In order to centralize the civil lawsuits pending in federal court, all civil suits pending in U.S. District Court for the Central District of California were recently transferred to Phoenix, where ACC is headquartered, and all pretrial proceedings were placed under one judge. The transfer was considered necessary to avoid duplication of discovery and possible inconsistency in pretrial rulings. Other civil suits by bondholders pending in superior court in both Los Angeles and Orange counties are unaffected by the federal order.

Not content with his role as a defendant, Lincoln owner Charles H. Keating, Jr. recently brought suit against the federal government in U.S. District Court in Washington, D.C., to recover Lincoln Savings from federal conservatorship. On May 9, Keating, in sworn testimony, made accusations that federal regulators first made an arbitrary decision to seize Lincoln Savings, and then justified the action two weeks later by downgrading the value of loan collateral and real property held by the S&L. Keating claims the loan portfolio was undervalued by 50%. After a two-year delay due to the intervention of five U.S. senators (see CRLR Vol. 10, No. 1 (Winter 1990) p. 113 for background information), the Federal Home Loan Bank Board finally seized Lincoln in April 1989 on grounds it was being "mismanaged". Upon a detailed examination of the books, Lincoln was later declared insolvent.

On March 30 in U.S. District Court in Phoenix, a federal judge dismissed a $100 million lawsuit by ACC against the U.S. government. In this suit, American Continental alleged that leaks to the news media by federal regulators had damaged the financial health of Lincoln Savings. ACC was forced to request the dismissal due to an earlier ruling by the judge which barred it from continuing to pay lawyers to pursue the case. The earlier decision was prompted by the fear that the attorneys' fees would use up the remaining equity in ACC and render any eventual judgments against the company worthless. The legal fees for all parties in the case had already reached $13.2 million.

In addition to the barrage of civil suits, a federal grand jury is investigating Keating and other ACC/Lincoln executives to determine whether there was any criminal conduct involved in the sale of ACC bonds at Lincoln offices or the use of Lincoln Savings assets for ACC investments.

Meanwhile, in state court, *In Re ACC/Lincoln Savings*, No. 589302 (Orange County Superior Court), a class action on behalf of 23,000 Lincoln Savings /ACC investors who lost over $200 million by buying uninsured ACC bonds at Lincoln Savings branches, will continue without the state of California and its regulatory agencies as named defendants. (*See supra* agency report on DEPARTMENT OF CORPORATIONS; *see also* CRLR Vol. 10, No. 1 (Winter 1990) p. 114 for background information.) The worthless bond sales were authorized by DSL and the state Department of Corporations (DOC); the lawsuit alleged that DOC breached its duty to the investing public in authorizing the sale.

However, on May 3, the state of California was dismissed as a defendant in the action; Orange County Superior Court Judge David Sills ruled that the state enjoys statutory immunity from prosecution "for acts of its employees...where the act or omission was the result of the exercise of discretion...whether or not such discretion is abused." The Democratic chair of the Assembly Finance and Insurance Committee, Pat Johnston, whose committee has been investigating the state's role in the failure of Lincoln Savings, had recommended in late April that Judge Sills disqualify himself from issuing a ruling regarding Governor Deukmejian's appointees, because the judge was under consideration by the Governor for appointment to a higher court, the Fourth District Court of Appeal, while hearing the *ACC/Lincoln* case.

On May 28, Karl Samuelian, the private attorney for Charles Keating, announced that his law firm will settle out of court for at least $4.3 million as one of the defendants in the class action. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 114 for background information.) The settlement, which still requires court approval, provides for an additional $10 million payment if plaintiffs do not recover that amount from other sources. Samuelian was chief fundraiser for Governor Deukmejian and procured $150,000 in contributions for Deukmejian's 1986 reelection campaign from Keating, ACC, and Keating's friends and business associates. Samuelian's law firm subsequently represented ACC before DOC and DSL in gaining approval of the sale of the now worthless junk bonds at Lincoln branch offices. The out-of-court settlement also includes former DOC Commissioner Franklin Tom, who became a partner in Samuelian's law firm a few months after approving the first bond sale. At this writing, Samuelian is still the state Republican Party finance chairman. In explaining the settlement, a spokesman for the firm said, "We decided it was better in this case to put the whole matter behind us." The settlement will actually be paid by the firm's insurers.

On March 17, the State Bar of California dropped its probe of Karl Samuelian, Franklin Tom, and current DOC Commissioner Christine Bender. The three were being investigated for possible conflict of interest in the regulatory approval and subsequent sale of junk bonds through Lincoln branch offices. The State Bar cited an "absence of evidence" of "willful violation" of the State Bar Act or the Rules of Professional Conduct in explaining its decision. The investigation was closed without prejudice, however, meaning that the case may be reopened if new evidence of violations is subsequently obtained.

Feds Seize More California S&Ls. On February 23, OTS officials took over the San Diego-based Imperial Savings Association and severed it from its holding company, Imperial Corporation of America. The seizure of Imperial was one of a dozen such seizures that day, which also included Mercury Savings and Loan, a $2.16 billion lender based in Huntington Beach. Imperial had assets of $9.68 billion and liabilities of $9.65 billion, but was insolvent under all three of the new minimum capital levels established under FIRREA. On a tangible capital basis, which does not include a valuation for "good will", Imperial was insolvent by $60.1 million. RTC has been appointed conservator for Imperial by OTS, and the S&L's eighty retail branches will remain open for business with Imperial's 4,000 workers becoming RTC employees. Depositors are insured by the federal government up to $100,000.

RTC is hoping to find a merger partner or outside investor to recapitalize the S&L so that the federal government will not have to pay for recapitalization. Imperial is still considered to have a valuable retail network despite its current negative capital problems. However, while federal regulators would prefer to sell the S&L in its entirety, it is more likely to be sold piecemeal due to the fact that a large share of Imperial's assets are in questionable automobile loans and junk bonds, two commodities with virtually no market. Under Reagan administration deregulation, Imperial had diverged its investment strategy from the traditional orientation of home mortgages to riskier investments thought to pay higher yields. Much of its losses have stemmed from defaults on auto loans, bad Texas real estate loans, and the need to write down its large junk bond portfolio in order to comply with FIRREA's prohibition on S&Ls holding junk bonds.

LEGISLATION:

AB 3643 (Johnston), as amended May 15, would make conforming changes in relation to federal law enacted in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. It would also revise penalties applicable for violations of certain provisions of the Savings Association Law.

Among other things, AB 3643 would also prohibit savings associations from entering into certain kinds of contracts with defined institution-affiliated parties without the prior approval of the DSL Commissioner, and would specify conditions for that approval. The bill would prohibit defined affiliated persons of a savings association from receiving, and prohibit a savings association from giving those persons compensation for procuring loans. The bill would also prohibit savings associations from giving, and any person from accepting, compensation in connection with a referral for defined real estate closing services.

This bill would also prohibit savings associations from discriminating against employees and other persons acting on behalf thereof who report violations of savings associations or their officers, directors, or employees to the DSL Commissioner, the Attorney General, or a district attorney. At this writing, AB 3643 is pending in the Senate Banking and Commerce Committee.

AB 4064 (Epple) is another legislative response to the Lincoln Savings and Loan scandal. As amended May 3, this bill would amend Corporations Code section 25140 to impose restrictions on the sale of securities by banks, savings associations, and industrial loan companies, and require specified regulators (including DSL and the Department of Corporations) to exchange information regarding enforcement action taken against financial institutions and open investigations of financial institutions. This bill is pending in the Senate Banking and Commerce Committee.

SB 2494 (Vuich), as amended May 31, would prohibit any financial institution with defined insured deposits from offering to the public, at any office at which it accepts deposits, any security of which it is the issuer, or any security of its holding company, parent, or affiliates that is not insured by a federal agency or instrumentality, except as permitted by state or federal law or regulation or by prior written approval of a financial institution regulator. It would also prohibit employees of financial institutions from soliciting the sale of those securities or directing persons to a place where those securities may be purchased. This bill is pending in the Assembly Finance and Insurance Committee.

SB 2431 (McCorquodale) would have abolished DSL and the Department of Banking, and the Department of Corporations, and created a Department of Financial Institutions, to be headed by a Commissioner of Financial Institutions appointed by the Governor and confirmed by the Senate. This bill was dropped by its author

SB 2432 (McCorquodale) would have repealed the Savings Association Law effective January 1, 1991, and abolished the Department. Savings association would have been prohibited from doing business in California on or after than date without a federal charger from OTS. This bill was also dropped.

SB 2163 (Hart), as amended on June 7, would require the Insurance Commissioner, the Superintendent of Banks, the Savings and Loan Commissioner, and the Commissioner of Corporations to adopt regulations governing ex parte communications with respect to their departments. In general, these regulations would require a copy of written ex parte presentations and a memorandum of ex parte oral presentations to decisionmakers to be placed in the public file or record of the affected proceeding. The bill would additionally require the adoption of procedures to ensure compliance with these provisions and to provide public notice listing written ex parte presentations and memoranda of oral presentations received during the previous week relating to affected proceedings. The bill would also permit the issuance of a public notice adopting more stringent regulations governing ex parte communications when it is in the public interest with respect to particular proceedings to do so. Unless exempted, the bill would prohibit any ex parte communication to decisionmakers during the period of time that this provision has been made applicable to the matter. The bill would make a violation of any regulation adopted pursuant to these provisions a misdemeanor subject to a specified fine. This bill is pending in the Assembly Finance and Insurance Committee.

SB 2364 (Russell), as amended April 24, would require all financial institutions chartered or licensed by this state with accounts insured by the Federal

Deposit Insurance Corporation to maintain complete loan and investment records as required by their state regulatory agency for the purpose of determining compliance with state law and federal insurance requirements. The bill would require specified loan and investment assets to be appraised annually, or more often if required by the financial institution's primary regulator. This bill is in interim study in the Senate Banking and Commerce Committee.

SB 2609 (Boatwright), as amended May 2, would prohibit savings associations from selling securities, except as expressly authorized by law. The bill would also prohibit the sale of securities on the premises of a savings association by anyone other than a savings association representative. This bill is pending in the Assembly Finance and Insurance Committee.

AJR 81 (Peace), as amended April 26, would memorialize the President and the Congress of the United States to oppose any federal legislation to bail out investors who purchased bonds through the parent company of Lincoln Savings and Loan Association. This resolution is pending in the Senate Banking and Commerce Committee.

The following is a status update on bills described in CRLR Vol. 10, No. 1 (Winter 1990) at page 114:

SB 1213 (Keene), which would exempt specified persons from the application of specified provisions of law relating to prohibited real estate acts, was last amended in August 1989 and is still pending in the Assembly Ways and Means Committee.

SB 476 (Robbins), which would specify that time deposits include a time certificate of deposit, was amended on May 21 and is pending in the Assembly Finance and Insurance Committee.

SJR 21 (Watson), which memorializes the President and Congress to include anti-redlining provisions in any bailout of savings and loan associations, is still pending in the Assembly Finance and Insurance Committee.

DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

Director: Ronald T. Rinaldi
(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 government employees at the state and local levels.

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.

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 government 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. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of 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 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:

Crane Safety. Recent crane accidents in California resulted in the deaths of five people in downtown San Francisco on November 28, and the death of a truck driver in Los Angeles on January 18. In response to these and other accidents, Cal-OSHA chief Robert Stranberg has ordered that all high-rise cranes in the state be inspected for possible safety violations. Of fifteen cranes inspected by January, eight were shut down for serious safety violations. The owner/operators of the cranes involved in both accidents had previously been cited by OSHA and/or Cal-OSHA for crane safety violations. Under the current inspection system, high-rise cranes are required to be inspected by private certification inspectors when initially erected and once per year thereafter. In addition, several legislators have introduced bills which would more strictly regulate the operations of cranes and require licensing of crane operators (*see infra* LEGISLATION). In 1988, OSB denied several petitions proposing stricter requirements on crane operators. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 81 for background information.)

Implementation of Proposition 97. With the passage of Proposition 97 in November 1988, Cal-OSHA regained full control over the enforcement of private sector worker safety standards in California as of September 24, 1989. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 101; Vol. 9, No. 1 (Winter 1989) p. 80; and Vol. 8, No. 4 (Fall 1988) p. 91 for background information.) However, Cal-OSHA has recently been the target of extensive criticism from various sources alleging that it has failed to fully implement occupational safety standards enforcement to the level which existed before the agency was dismantled in July 1987.

On January 24, the Senate Industrial Relations Committee and the Assembly Labor and Employment Committee held a joint legislative hearing to discuss Cal-