Court of Appeal affirmed the decision of Superior Court Judge Kurt J. Lewin and held that Underwriters Reinsurance must pay to DOI the present value of future policyholder claims (which have yet to be reported). This amounts to approximately $1.5 billion in damages. Underwriters had argued that it should only have to pay on actual claims as they become due. In early August, the California Supreme Court denied a petition for review in this matter.

In mid-August, a New York federal district court judge released almost $11.5 million in letters of credit posted by Mission's reinsurers. The letters of credit had been the subject of a restraining order sought by the reinsurers, claiming that they might suffer irreparable harm if the letters were released. U.S. District Court Judge John F. Keenan disagreed, saying that the California courts could handle any problems that might arise.

On August 13, DOI filed a suit against the former officers, directors, and shareholders of Coastal Insurance Company, FGS Insurance Agency, and the Advent Company. This is a major lawsuit seeking $66 million in direct damages, and $130 million more in punitive damages under the Racketeering and Corrupt Practices (RICO) Act. The suit claims that the defendants engaged in RICO violations, fraud, gross mismanagement, and breach of fiduciary duties which caused the insurance company to go bankrupt. DOI's complaint alleges that the defendants raided the company through gross overpayment of commissions, illegal bonuses and commissions, and self-dealing. Allegations include failure to disclose to consumers that their premiums were being financed at interest rates ranging up to 40%, and that their insurance was being placed through the CAARP system. Interestingly, DOI also alleges that defendants authorized the purchase of FGS Insurance Agency from Sid Field for $17.5 million, and less than two years later sold the company back to Field for $156,000.

On August 16 in *AIU Insurance Company v. Gillespie*, No. B045007, the Second District Court of Appeal upheld the provision of Proposition 103 requiring insurance firms to renew all policies except under three limited conditions. The insurance firm had petitioned the court to require the Commissioner to set aside her order finding AIU in violation of the renewal requirement of the law. AIU argued that because it mailed its notices of nonrenewal before the effective date of the initiative, it did not apply to those notices. However, the proposition provides that a notice of nonrenewal shall "be effective" only if it is based on premium nonpayment, fraud, or a substantial increase in the hazard insured against, and it expressly applies to all policies in effect when the measure took effect. The notices of nonrenewal were sent before the expiration of the relevant policies; but the court reasoned that nonrenewal cannot occur until the policy expires. The court held that "the determining fact is whether the policy was in effect when Proposition 103 was enacted. If it was, then the nonrenewal restriction applies; if it was not, the restriction does not apply."

In *Tricor California, Inc., et al. v. Superior Court of Los Angeles County*, No. B047910 (May 22, 1990), the Second District Court of Appeal extended the California Supreme Court's *Moradi-Shalal* decision disallowing third-party statutory bad faith causes of action to first-party claims asserted by insureds. The court reasoned that the legislature never intended to create any private causes of action under Insurance Code section 790.03. In following the Fourth District's August 1989 decision in *Zephyr Park Ltd. v. Superior Court*, the Second District stated: "[F]irst-party insureds are not significantly affected by denial of the right to bring a statutory claim." Common law bad faith causes of action may still be pursued. (See CRLR Vol. 9, No. 4 (Fall 1989) p. 97 and Vol. 8, No. 4 (Fall 1988) p. 87 for background information on the *Zephyr Park* and *Moradi-Shalal* cases.)

The First District Court of Appeal recently held that an insurer is not entitled to equitable indemnification from an insured's negligent attorney. In *California State Automobile Ass'n v. Bales*, No. A044424 (June 14, 1990), CSAA claimed that the negligence of an insured's attorney led to the delay in settling the insured's case, which was later the basis for a bad faith cause of action against CSAA. The appellate court reasoned that while "CSAA's claim might have merit in another context...," it would be inappropriate for a court to issue a ruling which may prevent an attorney from zealously representing his/her client or causing a divergence of interest between an attorney and his/her client.

On September 10, the Center for Public Interest Law (CPIL) filed a Public Records Act (PRA) suit against DOI on behalf of Joseph M. Belth, a professor of insurance at Indiana University. Professor Belth sought copies of DOI records on First Executive Corporation, a financially troubled life insurance holding company. DOI denied the request, asserting the documents were confidential. Immediately after the lawsuit was filed, DOI turned over the requested documents; CPIL is now seeking its attorneys' fees under the PRA.

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 August 15, Real Estate Commissioner James A. Edmonds announced numerous proposed changes to DRE's regulations in Title 10 of the CCR. Along with technical, nonsubstantive changes to sections 2785 and 2792.20, the Commissioner proposed the following substantive changes:

-Section 2792.14 currently requires that if a stock cooperative project is subject to a blanket encumbrance, satisfactory arrangements must be made to ensure that possessory rights of members of the cooperative will not be adversely affected by foreclosure or acceleration of the blanket encumbrance. The proposed amendment would require that satisfactory arrangements also be made for the payment of the blanket encumbrance. This amendment is intended to address problems encountered when stock cooperative projects have blanket encumbrances with a balloon payment provision and where no arrangements exist to ensure payment of that balloon.

-Section 2792.22 allows for a budget summary to be given to common interest subdivision association members in lieu of providing a pro forma operating budget. The proposed amendment would clarify the contents of the summary which may be provided in lieu of the pro forma operating budget by identifying the elements which must be included in the summary.

-Section 2792.27(b)(5) currently sets forth the requirements relating to the payment of assessments which must be met in order to annex real property to a subdivision; the obligation to pay begins upon the first sale of a subdivision interest in the annexed property. This amendment would begin the payment of assessments upon the first sale or upon occupancy of a subdivision interest in the annexed property.

-Section 2800 currently lists items which constitute a material change to a subdivision offering, thus requiring written notification to the Commissioner of that change. The proposed amendments would add the following changes to that list: (1) a failure by the subdivider to pay regular assessments for two or more months if paid on a monthly basis, and a failure to pay assessments two months after the assessments are due if not paid on a monthly basis; and (2) a subsidy agreement which has not been approved pursuant to section 2792.10.

-Proposed new section 2833 would provide that unexplained overages in a broker's trust account may not be used to offset shortages which might otherwise exist in a trust account. Also, the proposed section would set forth the record-keeping obligations of a broker with respect to those funds.

-Amendments to section 2834 would allow an employing broker to authorize another broker who has a written employment agreement with the employing broker to make specified trust account withdrawals.

-Amendments to section 2840 would substitute new statutory language revising the required notice which must be included in mortgage loan borrower disclosure statements.

-Amendments to section 2849 would revise the Mortgage Loan/Trust Deed Annual Report format to conform with statutory requirements.

-Current regulations set forth the criteria for determining whether or not a course of study at a private vocational school is equivalent in quality to real estate courses offered by colleges and universities accredited by the Western Association of Schools and Colleges. Included in the criteria for determining equivalence is a prohibition against misleading advertising as defined in section 3004 of the regulations. Proposed amendments to section 3000 would remove the reference to section 3004 from that definition.

Also included in the criteria in the current regulations is a requirement that a school provide certain information to students upon completion of a course. This proposal would include the name and address of the school in the information required to be given to students.

-Existing regulations do not set forth the elements which must be included in an application for approval for an equivalent course of study. A proposed amendment to section 3002 would specify the items which must be contained in such an application, including: (1) the name, address and telephone number of the applicant; (2) policy regarding attendance; (3) policy regarding refund and reexamination; (4) summary of the course, including materials to be used; and (5) policy regarding credit card usage and marketing program. The proposed amendment would also define a material change to an approved equivalent course of study and require submission and approval of material changes prior to use.

-Amendments to section 3004 would require an entity offering an equivalent course of study to include its name in its advertisements and promotions.

-Section 3007 currently lists the items which must be contained in an application for continuing education (CE) course approvals. A proposed amendment would add to those items the sponsor's policies with respect to credit card payment of student fees and a description of the sponsor's marketing program, including materials which will be used to advertise the course.

-Section 3008 currently provides that courses offering certain subjects will not be approved for CE course credit. The proposed amendment would delete the list of unacceptable subjects and provide instead that course offerings not addressing "consumer protection," "consumer service," "ethics," or "agency" topics will not be approved.

-Section 3012.2 currently sets forth the attendance records which must be kept by a CE course sponsor. Among the records required to be kept are "clock hours of attendance, including sign-in and sign-out attendance records." A proposed amendment to this section would replace that phrase with "verification of participant meeting minimum required attendance."

-DRE proposes to adopt new sections 3050-3056, Article 12.5, which would establish participation goals for minority and women business enterprises in its award of state contracts. A previous

attempt by DRE to enact similar provisions was disapproved by the Office of Administrative Law (see CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 145 for background information).

New section 3050 would provide definitions of relevant terms, and new section 3051 would provide that, in addition to other state contracting requirements, to qualify as a responsive bidder, a bidder shall be required to meet the statewide participation goals set forth in Public Contract Code sections 10115 *et seq.*, or demonstrate that a good faith effort was made to meet them.

New section 3052 would provide that the good faith effort requirement must be satisfied at the time of bid opening by establishing that the bidder is (a) a minority business enterprise and committed to performing not less than 14% of the dollar amount of the bid with its own forces and committed to using women business enterprises for not less than 5% of the dollar amount of the bid; (b) a women business enterprise and committed to performing not less than 5% of the dollar amount of the bid with its own forces and committed to using minority business enterprises for not less than 15% of the dollar amount of the bid; or (c) committed to use minority business enterprises for not less than 15% and women business enterprises for not less than 5% of the dollar amount of the bid. According to the proposed section, the Department shall evaluate the effort by the bidder to seek out and consider minority and/or women business enterprises as potential subcontractors or suppliers, and the Department may make a finding that the good faith requirement has been met.

New section 3053 would provide that if a bidder fails to meet the good faith effort requirement, that bidder shall be deemed not to be a responsive bidder and is ineligible for an award. New section 3054 would require bids proposing the utilization of minority and/or women business enterprises to contain a certification to that effect. New section 3055 would require inclusion in all contracts awarded by the Department of a provision allowing the Department the right to review documents and investigate for compliance with these regulations and Public Contract Code section 10115 *et seq.* New section 3056 would provide that the regulations will not impair the right of the Department to use adjudicatory or investigatory procedures available under existing law to ensure compliance.

-Finally, new section 3104 would change the post office box and zip code numbers of the Real Estate Recovery Account.

DRE was scheduled to hold a public hearing on these proposed changes on October 25 in Los Angeles.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 146-48:

AB 3238 (Lancaster) provides 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, this bill provides 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 was signed by the Governor on September 10 (Chapter 689, Statutes of 1990).

SB 2577 (Kopp). Existing law provides for the filing of a change in ownership statement containing specified information, including a prescribed notice, whenever a change in ownership of real property or a mobilehome subject to local property taxation occurs. Existing law also requires, until January 1, 1991, the assessor and the recorder to make available, without charge and upon request, preliminary change in ownership reports, in a specific form, which transferees of real property may complete and file concurrently with the recordation of documents evidencing a change in ownership. This bill, as amended August 27, deletes language repealing those provision, thereby continuing indefinitely those requirements. This bill was signed by the Governor on September 30 (Chapter 1546, Statutes of 1990).

SB 2641 (Torres), as amended August 27, provides that an equity purchaser is liable for all damages resulting from any statement made or act committed by the equity purchaser's representative, in any manner connected with the equity purchaser's acquisition of a residence in foreclosure, receipt of any consideration or property from or on behalf of the equity seller, or the performance of certain prohibited acts. This bill also specifies 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 purchase contract or the foreclosure sale contract, respectively, is void only upon grounds as exist for the revocation of any contract. This bill was signed on September 29 (Chapter 1537, Statutes of 1990).

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 record, in the appropriate office of the county recorder, a notice of default which contains specified information, including identifying the mortgage or deed of trust by stating the name(s) of the trustor(s) and giving the book and page where the mortgage or deed of trust is recorded. As amended August 9, this bill would have required that the notice of default also identify the name(s) of the trustor(s), or the last known owner(s) if the beneficiary has expressly consented to an assumption of the mortgage or deed of trust resulting in a transfer of ownership. This bill died in the Assembly Judiciary Committee.

AB 1825 (Areias), as amended August 21, would have established 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 as a state of emergency by the Governor. This bill was vetoed by the Governor on September 26.

AB 2755 (Areias) would have authorized the California Housing Finance Fund to establish, conduct, and administer programs of bond and loan insurance to improve single-family and multifamily residential housing opportunities for persons and families of low or moderate income, as well as 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, declarations, and statements of program objectives. This bill was vetoed by the Governor on September 27.

AB 2944 (Clute), as amended July 7, requires 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 the 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 mobile home park. This bill was signed by the Governor on July 25 (Chapter 421, Statutes of 1990).

AB 3071 (Lewis), as amended August 9, exempts from certain provisions of the

Real Estate Law relating to business opportunities (and hence from licensure as a real estate broker) any person who engages in specified acts for another or others in connection with the sale, purchase, or exchange of radio, television, or cable enterprises, as specified. This bill was signed by the Governor on September 10 (Chapter 729, Statutes of 1990).

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 mobile home only if the mobile home has been registered under the Mobilehomes-Manufactured Housing Act of 1980 for at least one year. As amended August 27, this bill deletes the requirement that the mobile home be registered for at least one year under the Act. This bill was signed by the Governor on September 30 (Chapter 1689, Statutes of 1990).

AB 3332 (Peace), as amended August 14, would have prohibited a mobile home park owner from accepting an offer to purchase the park unless the park owner gives written notice to any resident organization, as specified, and gives resident organizations ten days from the date of receipt of the required notice to make an offer to purchase the park, during which time the park owner is precluded from accepting the written offer to purchase. This bill was vetoed by the Governor on September 27.

AB 3594 (Speier), as amended July 3, makes it grounds for revocation or suspension of a license for a real estate licensee acting as an agent for the buyer to fail to disclose his/her direct or indirect ownership interest in any property, as specified, to the buyer. This bill was signed by the Governor on September 25 (Chapter 1335, Statutes of 1990).

SB 2397 (Craven) 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 purchaser states to the dealer in writing that he/she will obtain his/her own appraisal; and requires a copy of an appraisal made by the dealer or his/her agent to be delivered to the purchaser prior to the time the purchaser becomes obligated. This bill was signed by the Governor on July 9 (Chapter 200, Statutes of 1990).

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 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, including banks, savings and loan associations, and industrial loan companies. As amended August 22, this bill additionally excludes loans made or purchased by, among others, any savings bank or savings association holding company or subsidiary thereof, personal property brokers, commercial finance lenders, and consumer finance lenders. This bill was signed by the Governor on September 29 (Chapter 1534, Statutes of 1990).

AB 527 (Hannigan), as amended June 21, enacts the Real Estate Appraisers' Licensing and Certification Law and creates the Office of Real Estate Appraisers within the Business, Transportation and Housing Agency, to be administered by a director appointed by the Governor. The bill authorizes the appointment of a Real Estate Appraisers' Advisory Committee; specifies standards and procedures for licensure as a real estate appraiser and certification as a state certified real estate appraiser; and specifies certain provisions regarding licensing fees and continuing education requirements. This bill was signed by the Governor on August 10 (Chapter 491, Statutes of 1990).

SB 910 (Vuich), as amended August 13, provides that the salary of the director of the Office of Real Estate Appraisers created in *AB 527 (Hannigan)* is to be fixed by the secretary of the Business, Transportation and Housing Agency with the approval of the Department of Personnel Administration. This bill was signed by the Governor on September 18 (Chapter 1062, Statutes of 1990).

SB 2380 (Presley) requires the Office of Real Estate Appraisers created by *AB 527 (Hannigan)* to conduct a study on the feasibility of requiring all persons who perform or issue applications to be licensed. This bill also requires the Office to report to the legislature the results of that study on or before January 1, 1992. This bill was signed by the Governor on September 8 (Chapter 646, Statutes of 1990).

AB 2242 (Costa), as amended July 3, exempts from the definition of a real estate broker any person who is the employee of a 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 an employee of that property management firm or a salesperson licensed to the broker who meets requirements specified by the Real Estate Commissioner. This bill was signed by the Governor on September 14 (Chapter 925, Statutes of 1990).

FUTURE MEETINGS:
To be announced.

DEPARTMENT OF SAVINGS AND LOAN

Commissioner: William D. Davis
(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).

DSL Commissioner William Crawford retired from the Department on June 22. Governor Deukmejian appointed William D. Davis of Villa Park as the new Savings and Loan Commissioner.

MAJOR PROJECTS:

DSL Budget Woes Continue. DSL's budget for fiscal year 1990-91 is $5.5 million, with an allocation for 63 employee positions. This is a substantial decrease from last year's budget, which totalled $8.4 million and 124 staff positions. Mary Law, Chief Administrator for DSL, stated that presently the Department has a total of 37 employees. No new hiring is currently taking place because the Department is attempting to stabilize while determining its actual funding level.

The Department does not receive general taxpayer funding; instead, it relies on assessment fees it imposes upon state-chartered associations. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 148 and Vol. 10, No. 1 (Winter 1990) pp. 99-100 for background information.) DSL assesses these fees in July of each year; this year, some state-chartered associations converted to federal charters before July 1 to avoid