the Assembly.

AB 354 (Johnston) is a no-fault insurance proposal modeled after the New York system. The bill would require each owner of a motor vehicle other than a motorcycle to provide insurance that would provide first-party benefits. The no-fault benefits would compensate economic loss of up to $50,000 per person for health care expenses, for loss of earnings up to $2,000 per month. The bill provides that a tort victim would have no right to recover any damages in tort for basic economic loss, and except in the case of serious injury, would have no right to recover noneconomic losses. This bill is pending in the Assembly Committee on Finance and Insurance.

LITIGATION:

Proposition 103. On March 7, the California Supreme Court heard oral argument in *Cal-Farm Insurance Co. v. Deukmejian*, No. S007838, the insurance industry's challenge to Proposition 103. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 75-76 for background information.)

In the arguments, plaintiffs focused on three main contentions. First, Proposition 103 would create a private corporation to represent consumers in insurance matters, and formation of such a corporation is unconstitutional under Article 2, Section 12 of the California Constitution. Second, implementation of the proposition would result in a $125 million tax revenue shortfall, and would violate the tax rate set forth in Article 3, Section 28 of the California Constitution. Howard Rothman, attorney for the insurers in this case, argued that such a change in the gross premium tax could only properly be made by a two-thirds majority vote of the legislature. Third, the provision requiring rollback, reduction, and freeze of premium rates relies on an arbitrary 20% reduction figure, and does not consider the insurers' right to a fair rate of return on their investments. In regard to the severability argument—that is, whether some portions of the proposition that meet constitutional requirements could be effective if others are invalidated—Mr. Rothman asserted that the test is whether the electorate would have voted for Proposition 103 if it knew the initiative contained unconstitutional portions, and called the initiative an example of "bait and switch."

The defendants divided their allotted time for argument among Attorney General John Van de Kamp, Karl Manheim of Loyola School of Law, and Burlingame attorney Joseph Cotchett. The Attorney General assured the court that regulations implementing the proposition could be drafted to assure that any adjudication regarding rates would be fair to the insurance companies, and asserted that regulatory reform is necessary in view of the "sloth and inefficiency" of the insurance companies that have resulted in inflated premiums. Van de Kamp also countered that the provision in Article 2, Section 12 of the California Constitution regarding private corporations applies only to the identification in legislation of specific corporations, and was introduced to prevent a lottery company from administering a lottery it was proposing to the electorate.

Under the court's policy of deciding cases within ninety days of oral arguments, a decision is expected before June 5.

Agents Object to Insurance Sales by Banks. In January, Independent Insurance Agents and Brokers of California petitioned Insurance Commissioner Gillespie to rule on whether banks are qualified to be granted licenses to sell insurance. Proposition 103 repealed Insurance Code section 1643, which prohibited banks from selling insurance. However, two sections which appear to bar bank insurance sales remain in the Code. One of the sections (section 1208) prohibits banks from selling insurance in towns where the population is less than 5,000; the other (section 772) prevents bank subsidiaries from selling insurance.

The Commissioner denied the group's request for an investigation and public hearing on the matter, and deferred to a January 4 interpretive opinion of State Banking Department Superintendent Howard Gould, who concluded that the Financial Code provisions were "impliedly" repealed by the initiative. (*See supra* agency report on BANKING DEPARTMENT for additional information on this issue.)

The Independent Insurance Agents and Brokers, joined by the Professional Insurance Agents Association of California and Nevada, the California Association of Life Underwriters, and the Independent Insurance Agents of America, filed suit in Sacramento Superior Court to block the approval. The suit—which names a number of banks, Commissioner Gillespie, and Superintendent Gould among the defendants—alleges that "[n]either the Banking Department nor the Department of Insurance conducted any of the rulemaking procedures required by the California Administrative Procedure Act before adopting the Superintendent's determination." The court denied the agents' request for a temporary restraining order staying the licenses already granted to three banks—First Interstate Bank of California, Security Pacific National Bank, and Mid-State Bank of Arroyo Grande.

The case, *Sanford v. Gillespie*, No. 360783, will be heard by acting Presiding Judge James T. Ford in Sacramento.

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). 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 1988, 216,365 salespersons, 90,211 brokers, 17,332 corporations) and subdivisions.

License examinations require a fee of $25 per salesperson applicant and $50 per broker applicant. Exam passage rates average 55% for salespersons and 47% 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 $12.50.

The California Association of Realtors (CAR), the industry's trade association, is the largest such organization in the state. Approximately 105,000 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:

Continuing Education Monitoring Program. During the last quarter of 1988, 19 continuing education course offerings were monitored, 15 of which had no problems. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 94-95 for background information.) The remaining four offerings were found to have improper checks of attendee identification, and the sponsors failed to provide attendees with the DRE "Disclaimer Statement". Three offerings failed to monitor the final exam; three deviated from the approved course content; and one had no attendance monitoring and shortened the approved time of the seminar. DRE informed the course sponsors in writing of the problems and requested a response regarding what action would be taken to prevent any recurrence.

Single Responsible Party Task Force. "Single Responsible Parties" (SRPs) are persons who represent developers in DRE's subdivision application process. (See CRLR Vol. 9, No. 1 (Winter 1988) pp. 77-78 and Vol. 8, No. 4 (Fall 1988) p. 88 for further information.) The task force—comprised of members of the title industry, the legal profession, and DRE staff members—has developed a comprehensive training guide and plans to put on training seminars for SRPs throughout the state this year, with the hope that more complete applications will be submitted to the DRE. This would reduce overall processing time and thus benefit both housing developers and consumers.

Common Interest Subdivision Brochure. DRE has entered into a contract with the Community Associations Institute Research Foundation to prepare a Common Interest Development Brochure. This consumer-oriented brochure will be designed to inform and educate owners and potential owners of separate interests in common interest developments of the rights and responsibilities of ownership in a common interest development. The brochure will discuss the respective rights, duties, and powers of the individual owners of a separate interest and the association managing a common interest development; the economic costs related to common interest developments, including regular and special assessments, penalties, and fees; and the methods and manner of governing a common interest development, including the structure of the association, contents of governing documents, and standards for financial developments. DRE anticipates distribution of the brochure by mid-July.

LEGISLATION:

AB 339 (Hauser) would require any person intending to offer subdivided land for sale or lease to disclose to the DRE whether the adjacent land is zoned for timberland production. Existing law requires such individuals to file a notice of intention with the DRE, which must include a statement of the use(s) for which the proposed subdivision will be offered. This bill is pending in the Assembly Local Government Committee.

AB 527 (Hannigan) would provide that any person performing a certified appraisal pursuant to the Lancaster-Montoya Appraisal Act—which imposes standards and duties on appraisers—shall be deemed to be a certified appraiser. This bill would also provide that the rendering of an estimate of value in connection with negotiations regarding a contract governed by that requirement shall not constitute an appraisal. This bill is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 405 (Sher) would provide that as of July 1, 1989, all contracts to convey real property which contain an arbitration provision shall entitle the provision "ARBITRATION OF DISPUTES" and contain a specified notice. The same would be required in contracts between principals and agents in real property transactions containing an arbitration provision. This bill would specify that these requirements are only applicable to provisions for binding arbitration. This bill is pending in the Assembly Judiciary Committee.

SB 352 (Presley) would designate deputy commissioners of the DRE as peace officers while engaged in the performance of their duties. Under existing law, this would have the effect of including these persons within the state peace officer/firefighter category of Public Employees' Retirement Fund membership and provide for the termination of their federal social security coverage. This bill is pending in the Senate Judiciary Committee.

SB 251 (Craven) would make a number of changes in the current law governing real property securities and mortgage brokers, including the following:

-delete the prohibition against the payment of interest on specified funds retained by real estate brokers pursuant to the terms of a promissory note or real property contract;

-revise the definition of "real property security" and expressly include offers, solicitations, attempts to sell, and contracts for the sale or exchange of real property securities by telemarketing within the regulation of real property securities dealers;

-increase the bond required to be filed by real property securities dealers from $5,000 to $10,000, and authorize the filing of cash or cash equivalents in lieu of the bond; and

-revise the provisions delineating the costs of making a loan negotiated by a real estate broker and secured by a dwelling, late charges respecting balloon payments, and prepayment penalties that may be charged to the borrower.

This bill is pending in the Senate Banking and Commerce Committee.

LITIGATION:

In Decision No. S008559, The California Supreme Court depublished the Second District Court of Appeal's opinion in *Davey v. Real Estate Commissioner of the State of California*, No. B037692, which appeared at 206 Cal. App. 3d 348. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 78 for background information.)

FUTURE MEETINGS:
July 7 in San Diego.
September 29 in Los Angeles.
January 19 in Anaheim.
March 30 in Sacramento.

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 Title 10, Chapter 2, of the California Code of Regulations.

MAJOR PROJECTS:

Proposed Changes to DSL's Public Information Regulations. Changes to DSL's regulatory provisions relating to information which is available to the public were approved by the Office of Administrative Law (OAL) and became effective on February 4. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 79 and Vol. 8, No. 4 (Fall 1988) pp. 89-90 for background information.) The new regulations appear in Chapter 2, Title 10 of the California Code of Regulations (CCR).

Proposed Delayed Funds Availability Regulations. DSL has adopted regulatory changes to repeal sections 106.200-.205 and adopt new sections 106.200-.202, Chapter 2, Title 10 of the CCR, in order to comply with the federal Expedited Funds Availability Act (Title VI of Public Law 100-86, enacted on August 10, 1987). The federal law shortens the hold period which a financial institution may place on checks deposited by customers. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 79; Vol. 8, No. 4 (Fall 1988) pp. 80-81; and Vol. 8, No. 1 (Winter 1988) p. 78 for background information.) The new regulations require savings institutions under DSL's jurisdiction to conform to all funds availability requirements established by the Federal Reserve Board in 12 C.F.R. Part 220 *et seq.* At this writing, these regulations are undergoing review by OAL.

FSLIC Deficit. The national crisis of failing savings and loans continues unabated. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 79 and Vol. 8, No. 4 (Fall 1988) p. 90 for background information.) A report issued in January by the federal General Accounting Office (GAO) revealed that extensive fraud and other criminal behavior may have played a much larger role than has previously been disclosed. The GAO intensively investigated 26 failed or failing institutions—including some of the largest—that were merged, liquidated, or helped by federal regulators. GAO found that fraud or insider abuse existed in every case.

In early February, the GAO told Congress that regulators should take control of the nation's remaining insolvent savings and loan associations—which number at least 350—as soon as Congress settles on a plan to resolve the crisis. The purpose of isolating these institutions from the rest of the industry is to prevent them from competing with healthy institutions. Ailing savings associations offer high interest rates to attract deposits, thus driving up the cost of doing business for the entire industry and endangering healthy institutions. After a rescue plan is finally adopted, regulators should put the 350 institutions in receivership, install new management, and limit permissible activities until a buyer can be found or the institution is liquidated. The GAO advised Congress that the longer troubled institutions are kept open, the higher the total cost will be.

In early February, President Bush unveiled his plan to deal with the savings and loan crisis: the expenditure of $50 billion over the next three years which would be financed by the sale of thirty-year bonds by a new agency whose fiscal activities would not be included in the federal budget. At the same time, savings and loan regulation would be changed to prevent risky investments allowed by some state-charted thrifts such as those in California. No longer would S&Ls be allowed to invest in areas outside of housing such as shopping centers, restaurants, and race horses. Total spending including interest costs is expected to be $148 billion through 1999, but costs for the succeeding twenty years have not been calculated. The plan envisions seizure of 200 currently insolvent associations, plus another 100 or more nearly insolvent ones if Congress approves.

As for structural reform, the Federal Savings and Loan Insurance Corporation (FSLIC) would be separated from the Federal Home Loan Bank Board, with the latter abolished. A single chair, reporting to the Secretary of the Treasury, would charter savings and loans and also savings banks. The FSLIC and the Federal Deposit Insurance Company (FDIC) would be merged administratively into the Savings Association Insurance Fund (SAIF), but their insurance funds would be kept separate. Savings institutions would be prohibited from becoming banks (and thus switching to FDIC) for five years. The proposal would also raise the premiums charged to S&Ls for federal deposit insurance from $.20 per $100 to a maximum of $.75 per $100 in deposits. S&Ls would also have to double the amount of capital backing their loans so that they could meet the current standards required of banks. Finally, civil and criminal penalties for insider abuse by officers of banks and savings institutions would be sharply raised. For example, the new maximum criminal penalty would be twenty years in prison. A Justice Department strike team would be formed to investigate fraud and other criminal behavior.

In early March, Richard Darman, Director of the Office of Management and Budget (OMB), presented the Bush administration's plan for the savings and loan industry. Of the 3,024 institutions in existence in mid-1988, only 1,856 are expected to survive. There were 223 closed or merged in the second half of 1988; 345 are now insolvent; 200 are marginally solvent and likely to fail; and 400 will probably be unable to meet the new capital reserve standards previously mentioned.

In California, 19 savings and loan institutions have been closed or sold since January 1, 1988. For example, Gilbraltar Financial, one of California's ten largest thrift companies, is considered by federal regulators to be in unsound condition, with 1988 losses of approximately $75 million. Gibraltar Savings, with about 85 branch offices in California, has now replaced American Savings as the largest problem thrift in the state. American Savings and Loan of Stockton was sold to a Texas investment group for $350 million in cash, supplemented by an additional $150 million over the next three years. The Federal Home Loan Bank Board will also inject $1.7 billion in federal aid.

Beverly Hills Savings and Loan has been sold to a commercial banking company in Michigan. The financial institution reportedly failed because of bad investments in commercial real estate and in high-yield securities known as junk bonds. Carver Savings and Loan