designated employees to exercise the power to arrest and the power to serve warrants with respect to the Real Estate Law. SB 1316 passed the Senate on June 1 and is pending in the Assembly Committee on Governmental Efficiency and Consumer Protection.

AB 1042 (Bane). Existing law prohibits interest earned by a real estate broker's trust accounts from inuring to the benefit of the broker or any person licensed to the broker. This bill would specify that, notwithstanding these provisions or any other provision of law, benefits accruing from the placement in a demand deposit account of a commercial bank of funds received by a real estate broker who collects payments or provides services in connection with a loan secured by a lien on real property shall inure to the broker, unless otherwise agreed in writing by the broker and lender or noteowner on the loan. The bill would specify that the borrower shall receive at least a specified rate of interest on impound account payments. At this writing, AB 1042 is pending in the Assembly Finance and Insurance Committee.

SB 1128 (Green). Existing law requires real estate brokers who negotiate loans to be secured by a dwelling to cause certain written disclosures to be delivered to the prospective borrower before the prospective borrower becomes obligated on the loan. As amended May 3, this bill would require a prescribed general notice on balloon payments to be included in these written disclosures. This bill passed the Senate on June 8 and is pending in the Assembly Finance and Insurance Committee.

SB 988 (Beverly). Current law exempts specified financial institutions from real estate licensure and certain provisions applicable to real estate brokers and real estate securities dealers, and from certain provisions prohibiting taking unconscionable advantage of owners of real property in foreclosure. As amended May 23, this bill would expand that exemption to include bank subsidiaries, bank holding companies and their subsidiaries, savings banks and their subsidiaries, subsidiaries of savings and loan associations, holding companies of savings banks and savings and loan associations, and subsidiaries of those holding companies. SB 988 would exempt employees of mortgage bankers, as defined, when acting on behalf thereof, in originating, acquiring, or selling a promissory note in a mortgage banking transaction; it would also exempt employees of real estate brokers, when acting as an agent for institutional investors specified in the bill. This bill is pending in the Senate Appropriations Committee.

AB 2242 (Costa) would include, within the list of acts requiring licensure as a real estate broker, assisting or offering to assist another in filing an application for conducting a business opportunity upon lands owned by the state or federal government. This bill passed the Assembly on June 13 and is pending in the Senate Business and Professions Committee.

The following is an update on bills reported in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 89:

AB 339 (Hauser), which 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, is still pending in the Assembly Local Government Committee.

AB 405 (Sher), which requires 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 also contain a specified notice, was signed by the Governor on May 25 (Chapter 22, Statutes of 1989).

SB 352 (Presley) has been amended and no longer applies to DRE.

SB 251 (Craven), which would make several changes in the current law governing real property securities and mortgage brokers, has been amended. Among other things, it would:

-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;

-exempt from certain disclosure requirements loans and real property sales contracts where the purchaser or lender is a personal property broker, consumer finance lender, or commercial finance lender;

-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 definition of "broker-controlled funds" for purposes of certain disclosures required by brokers negotiating loans secured by a dwelling. The bill would also revise the late charges respecting balloon charges that may be charged to the borrower, and would authorize real estate licensees to impose service charges in connection with these loans for beneficiary statements and payoff demands.

At this writing, SB 251 is pending in the Senate Appropriations Committee.

LITIGATION:

In *Temple v. Kerwin (Real Estate Commissioner),* No. H004200 (Apr. 20, 1989), the Sixth District Court of Appeal held that claimants against the Real Estate Recovery Account may recover economic losses, including interest, from the fund, but may not recover for damages awarded for emotional distress.

In a fraud action filed against a DRE licensee, the Temples were awarded almost $300,000 in damages, including $100,000 in emotional distress damages. They were able to recover only $412 from the licensee. They applied to DRE for a payment of $20,000, the statutory maximum, from the Real Estate Recovery Account. The Commissioner denied the application; however, a trial court reversed the Commissioner. On appeal, on the issue of emotional distress damages, the court held that a claimant against the Account may seek amounts unpaid on a judgment that represent an "actual and direct loss" to the claimant. The program is intended to compensate only economic losses suffered by the actions of a real estate licensee, not noneconomic losses such as emotional distress.

FUTURE MEETINGS:

September 29 in Los Angeles.
January 19 in Anaheim.
March 30 in Sacramento.

DEPARTMENT OF SAVINGS AND LOAN

Commissioner: William J. Crawford
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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:

Delayed Funds Availability Regulations Effective. DSL's proposed regula-

tory changes to comply with the federal Expedited Funds Availability Act (Title VI of Public Law 100-86, enacted August 10, 1987) were approved by the Office of Administrative Law (OAL) and became effective on March 8. The new regulations appear in Chapter 2, Title 10 of the California Code of Regulations (CCR). (See CRLR Vol. 9, No. 2 (Spring 1989) p. 90 and Vol. 9, No. 1 (Winter 1989) p. 79 for background information on these regulatory changes.)

Savings and Loan Crisis Continues. The national crisis of failing savings and loans continues unabated. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 90; Vol. 9, No. 1 (Winter 1989) p. 79; and Vol. 8, No. 4 (Fall 1988) p. 90 for background information.) The nation's savings and loans lost a record $10.7 billion in deposits in January, more deposits in one month than during any single year in the history of the industry. In February, withdrawals were $9.4 billion. The comparable figure for all of 1988 was $8.6 billion. The outflow of deposits is attributable not only to investor nervousness about the soundness of the industry, but also to the higher interest rates offered by money market accounts. Profits in the industry have also plummeted. In 1988, savings and loans lost a post-Depression record of $12.1 billion: solvent institutions earned $2.7 billion, but this was offset by $14.8 billion in losses by the 12% of the industry that is insolvent.

As noted in CRLR Vol. 9, No. 2 (Spring 1989) at page 90, the role of fraud in causing the crisis is becoming increasingly apparent. In March, Assistant General Accounting Office Comptroller General Frederick Wolf told the Criminal Justice Subcommittee of the House Judiciary Committee that neither economic conditions nor deregulation primarily caused the industry's huge losses. "The bulk of the losses are directly attributable to the failure by management of a minority of the industry to follow basic, prudent business practices, including the establishment of effective systems of internal control," Wolf told the Subcommittee. GAO has carefully examined 26 insolvent thrift institutions and found numerous violations of fiduciary responsibilities to operate in a sound manner, such as allowing inadequate records and controls in all 26 institutions, excessive loans to one borrower in 23, and conflicts of interest among officers or directors in 20. If losses from failed institutions reach $150 billion, as various federal regulatory agencies have estimated, each American will have to pay $600 to cover the losses. "If we don't tell the American people we're going after the criminals, then I don't think we should ask them to write a check for $600," Wolf told the Subcommittee.

President Bush proposed his plan to deal with the crisis in February (see CRLR Vol. 9, No. 2 (Spring 1989) p. 90 for background information). In April, the U.S. Senate passed its amended version of the President's plan, a massive 564-page bill with a price tag of $157 billion which closely mirrors Bush's proposal. Key features of the bill include higher premiums for federal deposit insurance and new capital standards for savings and loans which require thrifts to have the same net worth (difference between assets and liabilities) as banks. This strict capital requirement is intended to force thrift owners to invest more of their own money, thus making savings and loan managers more reluctant to undertake risky and speculative investments. For example, permissive California laws have allowed savings and loans to invest in horse breeding farms, windmill farms to generate electricity, shopping centers, and restaurants. The Senate bill seeks to protect the federal insurance fund by prohibiting questionable ventures by state-chartered thrifts. In the days of low capital requirements, any downturn or reversal could soon wipe out an institution's investment, thus forcing its losses into the federal deposit insurance fund.

In reaction to the Senate bill, the thrift industry responds that only half of its solvent savings and loans can meet the new capital requirements. If these solvent institutions cannot make new loans unless they satisfy capital requirements which are impossible to meet, they will go out of business, according to industry spokespersons. California thrifts appear to be especially poorly capitalized: three of the state's savings and loans with more than $24 billion each in assets (California Federal, Glendale Federal, and First Nationwide) have very little capital and cannot meet the capital standard set forth in the Senate bill.

The capital requirement issue has also dominated deliberations in the House Banking Committee. The Committee's Democratic chair and its ranking Republican, backed by the Bush administration, want thrift owners to put up $3 of their own money, notes, or securities as tangible capital for each $100 they lend. At the present time, only half of the capital of the nation's solvent savings and loans is in tangible form; the rest is in the form of "supervisory good will," subordinated debt, and deferred loan losses. The latter are described by Congressional and administration critics as "smoke-and-mirrors accounting practices."

In other action, a bitterly divided House Banking Committee recently voted to require the savings and loan industry to provide $150 million per year in subsidized home mortgages for poor and moderate income persons as a condition of bailing out the deposit insurance fund. The Committee's vote was 27-24, with all Republicans and four Democrats in opposition to the proposal. Persons whose income is 80% or less than the median income in a particular area would qualify for subsidized mortgages at least two percentage points below the general market rate. Citing the complexity and magnitude of the savings and loan crisis, opponents of the subsidy plan argued that the bill should not be burdened with extraneous social issues.

LEGISLATION:

AB 643 (Calderon), which would require banks, credit unions, savings associations, and industrial loan companies to provide handicap access to automated teller machines after July 1, 1990, is pending in the Assembly Finance and Insurance Committee.

AB 2401 (Chacon). The current Bank and Corporation Tax Law provides for various credits against the taxes imposed on gross income. As amended May 17, this bill would provide a credit until January 1, 1993, in an amount equal to the amount of the interest and fee income earned by banks, savings associations, and mortgage lenders from loans which are secured by residential property located in a low-income area within California. The credit would be allowed only if the taxpayer contributes specified amounts to housing trust funds established by cities and counties to provide housing for low-income persons; uses specified amounts to establish small business lending programs; and makes specified reports to the state regarding its lending activity. This bill is pending in the Assembly Ways and Means Committee.

AB 2452 (Bane). Existing law authorizes savings associations to invest in specified securities, some of which are subject to the approval of the Savings and Loan Commissioner. AB 2452 would permit an association to make only those investments authorized by specific provisions of law, unless an investment has been previously approved in writing by the Commissioner. This bill is pending

in the Assembly Finance and Insurance Committee.

SB 476 (Robbins). Current law requires financial institutions to maintain and disclose information regarding consumer bank account charges on demand, savings, and time deposit accounts, as defined in federal regulations. This bill would specify that time deposits include certificates of deposit. SB 476 is pending in the Senate Banking and Commerce Committee.

SB 590 (Vuich) would make technical, clarifying changes in provisions specifying the maximum percentage of assets that an association chartered under the Savings Association Law, including a savings bank, may invest in specified loans for agriculture, business, commercial, or corporate purposes. This bill is pending in the Senate Banking and Commerce Committee.

SB 988 (Beverly). Current law exempts specified financial institutions from real estate licensure and certain provisions applicable to real estate brokers and real estate securities dealers, and from certain provisions prohibiting taking unconscionable advantage of owners of real property in foreclosure. As amended May 23, this bill would expand that exemption to include bank subsidiaries, bank holding companies and their subsidiaries, savings banks and their subsidiaries, subsidiaries of savings and loan associations, holding companies of savings banks and savings and loan associations, and subsidiaries of those holding companies. SB 988 would exempt employees of mortgage bankers, as defined, when acting on behalf thereof, in originating, acquiring, or selling a promissory note in a mortgage banking transaction; it would also exempt employees of real estate brokers, when acting as an agent for institutional investors specified in the bill. This bill is pending in the Senate Appropriations Committee.

SB 1213 (Keene). Existing law exempts any person or employee thereof doing business under state or federal law relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies from the definition of "real estate broker" for purposes of the Real Estate Law and other provisions relating to prohibited real estate acts. This bill would expressly exempt any person or employee thereof doing business under any law relating to bank subsidiaries, bank holding companies or subsidiaries thereof, savings banks or savings associations and subsidiaries thereof, and savings bank or savings association holding companies or subsidiaries thereof, from the application of these provisions. SB 1213 passed the Senate on May 18 and is pending in the Assembly Finance and Insurance Committee.

SB 1217 (Beverly). Under existing law, a mutual savings association may issue stock upon amending its articles of incorporation. Current law specifies that the resulting stock association shall be deemed a continuation of the mutual association. As amended May 31, this bill would declare that a prescribed federal regulation sets forth the law of California in that regard, and that existing state law has reflected that federal regulation since adoption of the federal regulation.

Existing law prescribes registration fees for savings and loan holding companies. This bill would require these fees to be paid within thirty days from notice by the Savings and Loan Commissioner that the fee is due.

Under existing law, defined agencies of savings associations are required to keep records of association business for which no record is maintained at a home or branch office of the savings association. This bill would limit that requirement to keeping records of completed association business.

Current law prohibits a savings association from investing in nonliquid assets or loans when the association fails to meet minimum liquidity requirements. This bill would adopt the minimum liquidity requirements in federal regulations for purposes of this prohibition, in lieu of the present statutory requirement.

Existing law specifies conditions under which savings associations may make defined real estate loans, providing for adjustment of the interest rate, payment balance, or term. This bill would revise these conditions and would additionally specify conditions for the making of shared appreciation loans by savings associations.

Under existing law, DSL is required to keep confidential information acquired by it in the regulation of savings associations. This bill would authorize the Commissioner to submit fingerprints of specified persons to law enforcement agencies in order to obtain prescribed information on criminal activity.

Current law prescribes monetary penalties for failure of a savings association to submit timely prescribed reports on its financial condition to the Commissioner. This bill would make these penalties applicable where a savings and loan holding company or a subsidiary of a savings association fails to submit timely specified reports.

Under existing law, the Commissioner may order removal of any director, officer, or employee of a savings association found to have participated in an unsafe or unsound practice or breached a fiduciary duty. Under current law, a person subject to such an order may not, without the permission of the Commissioner, participate in the conduct of the affairs of the savings association, holding company, or subsidiary, and may not serve as a director, officer, or employee of another savings association, savings and loan holding company, or subsidiary of such an association or holding company. This bill would require, as a condition to sanctions, that any participation in an unsafe or unsound practice be knowing and willful. The bill would also authorize, rather than require, the additional sanction (which the bill would also permit to be an alternative sanction) of prohibiting the person from participating in the conduct of the affairs of the savings association, holding company, or subsidiary or from serving as a director, officer, or employee of another savings association or holding company.

SB 1217 passed the Senate on May 31 and is pending in the Assembly Finance and Insurance Committee.

SB 1540 (Keene) would create a new division in the Financial Code providing for the establishment, operation, and supervision of California savings banks, as defined and specified, to take effect January 1, 1991. This bill failed passage in the Senate Appropriations Committee, but reconsideration was granted.

SJR 21 (Watson) memorializes the President and Congress to include anti-redlining provisions in any proposed bail-out of savings and loan associations. SJR 21 is pending on the Senate floor at this writing.

The following is a status update of bills discussed in detail in CRLR Vol. 9, No. 2 (Spring 1989) at page 91:

AB 438 (Lancaster), which would exempt (among others) banks, savings associations, and credit unions from existing requirements relating to the contents of mortgage contracts, deeds of trust, real estate sales contracts, or any note or negotiable instrument issued in connection with any of these documents used to finance the purchase or construction of real property containing four or fewer residential units, passed the Assembly and is pending in the Senate Banking and Commerce Committee.

SB 391 (Vuich), as amended Febru-

ary 17, affects existing law which authorizes the Savings and Loan Commissioner, if he/she believes that the public interest may be served by the appointment of a conservator, to appoint a conservator for a savings association, ex parte and without notice, if the Commissioner finds that the association is in an impaired condition, is engaging in practices which threaten to result in impaired condition, is in violation of an order or injunction, or where the association refuses to submit it books, papers, and affairs for inspection by the Commissioner. This urgency law instead authorizes that action whenever the Commissioner deems it necessary in order to conserve the assets of any association for the benefit of depositors and other creditors, and additionally specifies conditions when the assets of the association are substantially dissipated because of violations of law or regulation, unsafe or unsound practices, or when the association is in an unsafe or unsound condition to transact business. This bill was signed by the Governor on April 14 (Chapter 11, Statutes of 1989).

LITIGATION:

In *Coit Independence Joint Venture v. Federal Savings and Loan Insurance Corp.*, 89 Daily Journal D.A.R. 3637, the U.S. Supreme Court reversed the Fifth Circuit Court of Appeals and ruled that Congress did not grant the Federal Savings and Loan Insurance Corporation (FSLIC) exclusive authority to adjudicate state law claims against a failed savings and loan association. Creditors of a failed savings and loan are entitled to judicial review of these claims. Moreover, they need not exhaust FSLIC's administrative claims procedures before suing because the lack of a clear deadline on FSLIC's consideration of claims makes its procedure inadequate. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 90 for background information on this case.)

DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

Director: Ronald T. Rinaldi
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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.

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:

Implementation of Proposition 97. At its March meeting, OSB staff announced that it had attended a special two-day training session on rulemaking conducted by the Office of Administrative Law (OAL). In an attempt to bring California's standards to a level at least as effective as federal OSHA's standards, staff is exploring ways to accelerate the process of adopting standards. Staff noted that because of the general interest in the restoration of Cal-OSHA's private sector enforcement and the need to reduce confusion on the part of the public as a result of dual enforcement that was present prior to Proposition 97, the adoption of some standards on an emergency basis may be possible.

Regulatory Action Approved. At its March meeting, OSB adopted proposed changes to Title 8, Boiler and Unfired Pressure Vessel Safety Orders, Article 5, section 779(a) and (b) of the California Code of Regulations (CCR). On December 23, OAL had disapproved previously adopted revisions to this section (see CRLR Vol. 9, No. 2 (Spring 1989) pp. 91-92 and Vol. 9, No. 1 (Winter 1989) p. 80 for background information). Existing subsections (a) and (b) of section 779 outline the qualifications and conditions under which a certificate of competency may be issued to a person employed as an inspector of boilers and pressure vessels. The purpose of this rulemaking action is to update the California regulations to be consistent with the rules of the National Board of Boiler and Pressure Vessel Inspectors, and to ensure that applicants with a certificate of competency have proper knowledge of the Boiler and Fired Pressure Vessel Safety Orders and Unfired Pressure Vessel Safety Orders in Title 8. OSB decided that the modifications made by staff to the proposed revisions since OAL's disapproval were adequate to meet OAL's standards. OAL approved these regulatory changes on May 12.

Emergency Asbestos Regulations. At its May meeting, staff provided OSB with advance notice that an emergency adoption of revisions to Cal-OSHA's asbestos standards would be scheduled