qualifications a person must meet in order to be eligible for a good driver discount policy; *AB 263 (Floyd)*, which would require DOI and the Department of Motor Vehicles to directly accept applications for automobile liability insurance under the state's assigned risk plan and would prohibit those departments from charging any commission with respect to the applications; *AB 354 (Johnston)*, a modified "no-fault" bill which would require each owner of a private passenger motor vehicle, other than a motorcycle, to maintain insurance that would provide personal injury protection benefits of up to $15,000 actual payout per person for health care expenses; *AB 451 (Johnston)*, regarding the qualifications that must be met in order to qualify for a good driver discount policy; and *AB 744 (Calderon)*, which would give California drivers a choice between obtaining traditional, liability-based policies or no-fault coverage.

LITIGATION:

A U.S. District Court judge dismissed *In re Insurance Antitrust Litigation*, No. C88-1688 WWS (U.S.D.C. N.D.Cal.), a lawsuit brought by the attorneys general of nineteen states, including California, alleging that 32 American and British insurance companies conspired to restrict the availability and coverage of commercial liability insurance, thus driving up the price. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 87; Vol. 9, No. 1 (Winter 1989) p. 76; and Vol. 8, No. 4 (Fall 1988) p. 87 for detailed background information.) Immediately following the ruling of U.S. District Judge William J. Schwarzer on August 21, California Attorney General John Van de Kamp announced he would appeal the decision to the U.S. Ninth Circuit Court of Appeals. On July 28, Judge Schwarzer had issued a notice of intended decision to dismiss the action because the domestic insurers are immune from the McCarran-Ferguson federal antitrust laws. As to the British insurers, Judge Schwarzer intended to dismiss because the court lacks subject matter jurisdiction. Following a hearing on the proposed ruling, the court issued a final ruling on the same grounds.

In *Zephyr Park, Ltd. v. Superior Court*, No. D010472 (Aug. 30, 1989), the Fourth District Court of Appeal held that first-party bad-faith actions against insurers are barred by the rule in *Moradi-Shalal v. Fireman's Fund Ins. Co.* (See CRLR Vol. 8, No. 4 (Fall 1988) p. 87 for background information.) The court ruled that the rationale behind *Moradi-Shalal*, though a third-party case, applies to first-party situations as well. Thus, first-party bad-faith claims are abolished if filed after the date of the *Moradi-Shalal* decision.

On August 22, a three-judge panel of the Second District Court of Appeal ruled that auto insurers are not immune from the state's unfair business practice statutes, and must bear the cost of collision damage waivers on rental autos for policyholders. In *Beatty v. State Farm Mutual Automobile Ins. Co.*, No. B038845, plaintiff had an auto insurance policy with State Farm which provided for a rental car in the event plaintiff's car was being repaired. Plaintiff took his car in for repair after an accident, and State Farm paid the fee for the rental car but refused to pay for a $140 collision damage waiver fee for the rental. Plaintiff filed a class action alleging unfair business practices. The suit was dismissed at the superior court level, but the court of appeal reversed, holding that the insurer is not exempt from the Unfair Business Practices laws, Business and Professions Code section 17200 *et seq.*, and should pay for the waiver. The case was remanded for further proceedings.

On July 17, the California Supreme Court ruled that attorneys hired by insurers cannot be sued for bad faith in failing to settle with an insured. In *The Doctors' Company v. Superior Court*, Nos. S003148 and S003588, the plaintiff argued that the insurer's attorneys conspired with the insurer to withhold a deposition from the insurer's medical expert so that the expert would testify favorably for the insurer. The court held that the attorneys could not be liable for bad faith because the statutory duty to settle in good faith applies "solely" to insurers. The attorneys were not insurers, but rather, agents, and therefore "not subject to that duty." In *Doctor's*, the Court overruled a 1983 opinion by the First District Court of Appeal, *Wolfrich Corp. v. United States Automobile Ass'n*, 149 Cal. App. 3d 1206 (1983).

In a lawsuit filed on June 13 by a candidate for the elective Insurance Commissioner post, San Francisco attorney Ray Bourhis charged that DOI and Commissioner Gillespie have "systematically" failed to enforce California insurance law and that the Department routinely "destroys evidence" of violations by insurers. The suit alleges that DOI does not prosecute insurers who violate provisions outlawing unfair competition and deceptive practices.

The complaint alleges that "tens of thousands" of complaints have been filed over the past thirty years, and the Department and Gillespie have "never enforced or prosecuted a single...violation in any of those cases." Bourhis alleged that a DOI official had told him that it is the Department's practice not to prosecute Insurance Code violations. Instead, if complaints could not be resolved by agreement with the insurer, "that's the end of it."

Additionally, the complaint alleges that Gillespie and the Department have "illegally denied and continue to deny public access to their records and files." Bourhis, when requesting records relating to the above-mentioned complaints, was told that such records were not available because DOI policy calls for destruction of the materials "within two to six months of the filing."

The complaint seeks an order directing Gillespie to outline in writing the reasons for not prosecuting alleged violations and to require her to maintain files on consumer complaints and make them available for public inspection.

Gillespie defended her actions by pointing to recent fines that may be assessed against insurers for unfair claims practices. Furthermore, she justified the destruction of complaints by opining that retention of the files "would be just a very, very excessive file system."

At this writing, the case is still pending.

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 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:

Applicant Disclosure Regulation. On July 6, after resubmittal by DRE, the Office of Administrative Law (OAL) approved the Department's proposed adoption of new section 2746, Title 10 of the California Code of Regulations (CCR), which identifies specific facts which an applicant for a real estate license, and officers, directors, or persons owning over 10% of the stock of a corporate applicant, must disclose in order to facilitate the Commissioner's determination of the honesty and truthfulness of the individuals involved. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 88 and Vol. 9, No. 1 (Winter 1989) p. 77 for background information.)

Subsequent to OAL's approval of the addition of section 2746, DRE published notice of its intent to amend that section. The proposed amendment would require reporting of criminal convictions and of prior real estate or other business or professional licenses during the ten years prior to the application for a corporate real estate broker license and for reinstatement of a license. It would also request the person's social security number on a voluntary basis. DRE is accepting written comments on this proposed regulatory change until January 1.

Proposed Rulemaking. On October 17 in Los Angeles, the Commissioner was scheduled to hold a public hearing on numerous proposed changes to DRE's regulations in Title 10 of the CCR.

The Commissioner proposes to amend section 2785, which currently defines specific acts and omissions that warrant denial of an application for a real estate license. The regulation also describes a number of acts defined as unethical conduct and a series of business practices defined in the regulation as beneficial conduct. As amended, this regulation would not refer to unethical conduct or beneficial conduct. Instead, it would be organized into four categories: (1) unlawful conduct in sale, lease, and exchange transactions; (2) unlawful conduct when soliciting, negotiating, or arranging a loan secured by real property or the sale of a promissory note secured by real property; (3) guidelines for professional conduct in sale, lease, and exchange transactions; and (4) guidelines for professional conduct when negotiating or arranging loans secured by real property or sale of a promissory note secured by real property. Within each category, a list of specific acts justifying license denial is included.

Section 2792.20 currently provides that governing instruments for common interest subdivision associations must contain a provision under which the governing body of an association may adjourn a meeting and reconvene in executive session with the approval of a majority of the members of the governing body. The proposed amendment would provide that, when all the members of the board are present, approval by a majority of the members of the governing body is required.

Section 2792.22 currently requires that governing instruments of an association for a common interest subdivision mandate an annual distribution of "financial statements" and other informative documents (including a budget) to the members. As amended, this section would require that governing instruments mandate distribution of a "pro forma operating budget" or, in the alternative, a summary of the pro forma operating budget.

New section 2792.30 would provide alternative(s) to the "reasonable arrangements" required in governing instruments for common interest subdivisions set forth in sections 2792.8 through 2792.29. These alternatives would accommodate so-called master planned communities. The Commissioner would be empowered to determine whether a project is a master planned community and the extent to which alternatives to the reasonable arrangements are applicable to the subdivision.

The proposed adoption of Article 25.2 (sections 3050-3057) would set forth standards and procedures for attaining minority business enterprise and women business enterprise (M/WBE) participation in contracts awarded by DRE. The article would set forth a goal of 15% for minority enterprises and 5% for women-owned businesses, and DRE's method of achieving these goals.

DRE Brochures Now Available. Two studies funded through DRE's Education and Research Section have recently been completed and are available to the public at a cost of $6 each. *Analysis of California's Escrow Industry as it Affects Real Estate Licensees* (Arthur Young) explores the businesses authorized to conduct escrow activities in California, the various business practices utilized, and the effects of those differing practices on the consumer and the real estate industry. *Private Mortgage Insurance: Its Effects on Real Estate Transactions and its Benefits to Real Estate Licensees* includes an evaluation of the impact of PMI on real estate transactions, the real estate and mortgage lending industries, the consumer, and the cost of real estate in general.

LEGISLATION:

The following is a status update of bills described in detail in CRLR Vol. 9,

No. 3 (Summer 1989) at pages 88-89:

AB 1042 (Bane). As amended July 17, this bill provides that notwithstanding existing provisions 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 note owner on the loan. This bill was signed by the Governor on September 6 (Chapter 305, Statutes of 1989).

SB 251 (Craven), as amended September 1, makes several changes in the current law governing real property securities and mortgage brokers. This bill, among other things, deletes 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. This bill was signed by the Governor on October 1 (Chapter 1275, Statutes of 1989).

SB 1128 (Green) requires a prescribed general notice on balloon payments to be included in written disclosures by real estate brokers who negotiate loans to be secured by a dwelling. This bill was signed by the Governor on September 15 (Chapter 493, Statutes of 1989).

SB 743 (Seymour), as amended June 15, makes it a crime to knowingly make, issue, publish, deliver, or transfer as true and genuine any subdivision public report which is false, forged, altered, or counterfeit, or to make or participate in the making, issuance, delivery, transfer, or publication of a public report with knowledge that it is forged, altered, false, or counterfeit. This bill was signed by the Governor on September 6 (Chapter 296, Statutes of 1989).

SB 1316 (Seymour). Existing law requires a real estate broker to retain for three years copies of certain documents and to make such documents available for examination and inspection by the Commissioner of Real Estate or his/her designated representative, as specified. As amended July 17, this bill provides that these documents are to be made available for copying as well as examination and inspection. This bill also specifies that an application for the real estate broker license examination must be made in writing to the Commissioner and specifies that the Commissioner may prescribe the format and content of the broker or salesperson examination application. This bill specifies that the application for the broker or salesperson examination must be accompanied by the real estate broker or salesperson license examination fee. This bill was signed by the Governor on September 20 (Chapter 640, Statutes of 1989).

The following bills were made two-year bills, and may be pursued when the legislature reconvenes in January: *AB 339 (Hauser),* which would require any person intending to offer subdivided land for sale or lease to disclose to DRE whether the adjacent land is zoned for timberland production; *SB 1216 (Beverly),* which would enact the Real Estate Appraisers Licensing and Certification Law prohibiting a person from engaging in real estate appraisal activity without being licensed by DRE; *AB 527 (Hannigan),* which, as amended August 29, would enact several regulations regarding real estate appraisals, including the provision that any person acting as a real estate appraiser without a real estate appraiser's license or real estate broker's license would be guilty of a crime, as specified; *AB 2242 (Costa),* which 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; *SB 910 (Vuich),* which, as amended August 21, would appropriate $730,000 from the Education and Research Account in the Real Estate Fund to DRE as an advance, repayable as specified, in order to establish a regulatory structure for the licensing and certification of real estate appraisers; and *SB 988 (Beverly),* which would expand certain exemptions regarding real estate licenses 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.

FUTURE MEETINGS:

January 19 in Anaheim.

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:

Federal Bailout Bill Signed. On August 9, President Bush signed the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), a sweeping savings and loan industry reform bill which is expected to cost over $166 billion over the next ten years, and a total of $306 billion over the next 33 years. (See CRLR Vol. 9, No. 3 (Summer 1989) p. 90; Vol. 9, No. 2 (Spring 1989) p. 90; Vol. 9, No. 1 (Winter 1989) p. 79 for background information.)

The bill, which completely overhauls the federal regulatory and insurance frameworks and requires thrifts to abandon speculative investments which have nearly destroyed the industry, authorizes state and federal regulators to close down or sell more than 500 insolvent S&Ls. The bill abolishes the Federal Home Loan Bank Board, which formerly regulated the nation's S&Ls, and creates the Office of Thrift Supervision in its place. The bill also created the Resolution Trust Corporation, which will close off and sell the assets of the nation's failed associations under management of the Federal Deposit Insurance Corporation (FDIC). The bill also creates the Savings Association Insurance Fund (SAIF) to replace the Federal Savings and Loan Insurance Corporation, which is now depleted. Higher premiums from S&Ls will replenish the SAIF.

Among other things, the bill more than doubles previous capital requirements (which is intended to force S&L investors to put up more of their own money in order to receive deposit insurance, and discourage risky investments); prohibits any thrift from investing in low-rated corporate debt securities ("junk bonds"); requires that 70% of an institution's loans go toward housing and housing-related investments; and raises civil penalties for wrongdoing by officers and directors of insured institutions to $1 million per day.

The virtual collapse of the savings and loan industry is being blamed on a variety of sources. The Reagan administration is faulted for cutting back on thrift regulation and encouraging thrift owners to pursue high-risk investments in order to buy themselves out of debt.