



loss ratios annually; and regulates the advertising of medigap policies. This bill was signed by the Governor on September 24 (Chapter 1320, Statutes of 1988).

The following bills died at the end of the legislative session:

AB 600 (Isenberg), which would have established the California Catastrophic Health Insurance Plan; *SCA 38 (Rosenthal)*, which would have created the Insurance Commission, with prescribed membership, powers, and duties; *AB 2787 (Waters, et al.)*, which would have required health care service plans to offer group infertility treatment coverage; *SB 2900 (Johnston, Isenberg)*, which would have removed the current prohibition against the use of an AIDS blood test for the determination of insurability; *SB 2043 (Robbins)*, which was intended to be a legislative alternative to the ballot initiatives; *SB 2534 (Robbins)*, which would have required monthly installment payments to be made available to those insured by the state assigned risk auto insurance plan; *SB 2774 (Roberti)*, which would have required the Department of Health Services to study the unmet needs of the medically uninsured and under-insured population and the impact of policy alternatives; and *AB 4250 (Allen)*, which would have required the Commissioner to report on the problem of sodium sulfate and other elements as they affect damage claims filed under the homeowner insurance policies.

LITIGATION:

Bad Faith Decision Overturned. In August, the California Supreme Court overruled the controversial decision of *Royal Globe Insurance Co. v. Superior Court*, 23 Cal. 3d 880 (1979), which established the third-party bad faith cause of action in California. The ruling in *Moradi-Shalal v. Fireman's Fund Insurance Companies*, No. L.A. 32222, 88 D.A.R. 10717 (August 18, 1988), eliminates the right of persons injured by the negligence of an insured party to sue that party's insurance company for a bad faith refusal to pay on an insurance claim under the California Unfair Practices Act.

The opinion states that "[n]either section 790.03 nor section 790.09 was intended to create a private civil cause of action against an insurer that commits one of the various acts listed in section 790.03, subdivision (h). The contrary *Royal Globe* holding reportedly has resulted in multiple litigation or coerced settlements, and has generated confusion and uncertainty regarding its application."

The court also urged the Insurance Commissioner to "continue to enforce the laws forbidding [unfair] practices to the full extent consistent with our opinion." The Commissioner may enforce administrative sanctions against insurers in the form of cease and desist orders, suspensions, or fines up to \$55,000.

Harvey Levine, president-elect of the California Trial Lawyers Association, who argued the case before the court, criticized the decision, saying that it gives insurers "a new license to handle claims with impunity." Levine also asserted that the ruling indicates a need for legislation in the areas of claims handled by insurers, and pointed out that Proposition 100 would create a statutory cause of action against insurers for bad faith handling of a claim.

Antitrust Suit. Ten more states have joined a suit filed by Attorney General John Van de Kamp and eight other state attorneys general in March of this year against 31 insurers and underwriters. The suit alleges that the companies used public statements to coerce and intimidate their fellow insurers into eliminating their coverage of long-term pollution damages, limiting their coverage of customer legal costs, and adopting a type of insurance form which allegedly reduces insurers' liability on long-term claims. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 91 for background information.) The suit, *In re Insurance Antitrust Litigation* (C88-1688WWS), was filed in U.S. District Court in San Francisco and will be heard by Judge William W. Schwarzer. The action is still in the pretrial stage, and the court has advised the parties to file any motions by December.

Gender in Rate Setting. In August, the California Supreme Court rejected a request by the American Civil Liberties Union to depublish a court of appeal opinion permitting insurers to set different rates for men and women. The Second District Court of Appeal had ruled in May in *Fiske v. Gillespie*, 200 Cal. App. 3d 1243 (1988), that no actual controversy existed in the suit since it did not allege that the parties had exhausted their remedies with the Department of Insurance.

Initiatives. Also in August, the Supreme Court rejected requests to remove two measures from the November 8 ballot. The court unanimously refused to take jurisdiction over petitions in *Insurance Industry v. Eu*, No. S005716, an attempt to disqualify Proposition 100; and *Owen v. Eu*, No. S006715,

against Proposition 104. (See *supra* LEGISLATION.)

FUTURE MEETINGS:

To be announced.

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 pro-



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vision 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. Since January 1, 1988, the DRE has monitored 32 continuing education offerings, and found that 18 complied with its laws and regulations. (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 94-94 and Vol. 8, No. 1 (Winter 1988) p. 83 for background information.) The remaining 14 offerings were all found to have improper checks of attendee identification. In addition, four sponsors failed to give a closed book examination; five sponsors failed to monitor the final examination; and one sponsor allowed two attendees to sleep through the course. Whenever a violation occurs, DRE informs the sponsor in writing of the problem and requests a response regarding the action which will be taken to prevent recurrence of the problem.

Retired Annuitant Processing Program. In April, DRE implemented a processing plan to head off a developing backlog of public report applications and standard subdivision filings. DRE temporarily hired four retired annuitants, that is, retired Deputy Commissioners who have had subdivision processing experience. This program

ended on August 12, since state regulations dictate that retired annuitants may be employed for only ninety working days. As of June 24, 53 public reports had been issued and deficiency letters had been supplied to the applicants well within thirty days.

"Single Responsible Party" Task Force. Persons who represent developers in DRE's subdivision application process are sometimes referred to as "single responsible parties." With the help of some of the subdivision industry's most knowledgeable people, DRE looks forward to the creation of a comprehensive training guide for single responsible parties, which is expected to result in the submission of more complete applications—a benefit to housing developers and consumers alike.

Fingerprint Cards. The DRE requires new licensees to submit a completed fingerprint card along with their application and fee. The state Department of Justice processes these cards, flags the individual's record, and provides DRE with either a clearance or a record of violations for original applicants. Under DOJ's Arrest Notification Program, arrests of current licensees are also forwarded to DRE for tracking.

The DOJ bills the DRE for these services, which passes the costs on to the original licensees. Since the DOJ has raised its fee by \$2, DRE has raised its fee from \$17 to \$19, effective August 1. Thus, anyone who successfully completes an examination on or after August 1 and is required to submit a fingerprint card will be subject to a \$19 fee.

LEGISLATION:

AB 4034 (Stirling). Existing law provides that any person who has obtained a final judgment against a real estate licensee may apply to the Real Estate Recovery Account for payment of the amount unpaid on the judgment. The liability of the Recovery Account shall not exceed specified limits regardless of the number of persons aggrieved, parcels of real estate involved, or judgments against the licensee. This bill specifies that when multiple real estate licensees are involved in a transaction and the individual conduct of two or more of the licensees results in a judgment, the claimant may seek recovery from the Recovery Account against any of the licensed real estate personnel. This bill was signed by the Governor on August 22 (Chapter 517, Statutes of 1988).

AB 3773 (Hauser), as amended May 9, exempts real estate brokers from per-

forming the property inspection required by section 2079.6 of the Civil Code and from disclosure to the buyer if the transfer involved is of subdivided lands required to be preceded by a public report or is a transfer of subdivided lands which may be made without a public report under specified exemptions, unless the property has been previously occupied. This bill was also signed by the Governor (Chapter 274, Statutes of 1988).

The following is a status update on bills previously discussed in CRLR Vol. 8, No. 3 (Summer 1988) at page 95 and Vol. 8, No. 2 (Spring 1988) at pages 89-90:

SB 2521 (Beverly), which specifies fee information required to be included on orders appointing receivers and provides that unless stated in the order, the Commissioner is not liable for payment of those fees and costs, was signed by the Governor on August 10 (Chapter 468, Statutes of 1988).

AB 2781 (Costa), which deletes the January 1, 1989 repeal date of the existing law which requires a local agency, in approving or disapproving a tentative subdivision map, to apply only those ordinances, policies, and standards which were in effect at the date of the completion of the subdivider's application, was signed by the Governor on August 24 (Chapter 548, Statutes of 1988).

SB 2640 (Vuich), which was signed by the Governor on September 24 (Chapter 1340, Statutes of 1988), amends sections 10148, 10232.4, and 10236.2 of the Business and Professions Code. Existing law requires a real estate broker to retain for three years copies of all listings, deposit receipts, cancelled checks, and any other documents executed by the broker or obtained by the broker in connection with any transaction requiring a real estate broker's license; brokers are subject to an audit without notice. This bill requires the Real Estate Commissioner to charge a real estate broker for the cost of an audit upon specified findings. The Commissioner is permitted to maintain an action for the recovery of the cost and is allowed to use the estimated average hourly cost for all persons performing audits of real estate brokers to determine the cost incurred for the audit. This bill also imposes specified penalties for late filing of reports with the DRE, and provides that failure of a broker to pay such fines is grounds for license suspension or revocation.

SB 1891 (Seymour), as amended on May 9, authorizes the Real Estate Com-



missioner to require proof concerning the honesty and truthfulness of the directors or persons owning more than 10% of the stock of any corporation applying for a real estate license. It also authorizes license revocation or suspension for any corporate licensee or applicant if an officer, director, or person owning more than 10% of the corporation's stock has committed any act specifically prohibited under sections 10152 and 10177 of the Business and Professions Code. This bill was signed by the Governor on August 22 (Chapter 521, Statutes of 1988).

SB 1890 (Seymour), as amended on May 25, relates to nontransportation expenses incurred in the inspection of subdivided lands outside California. This bill revises the provision regarding nontransportation expenses to provide that an amount estimated to be necessary to cover the actual and necessary subsistence expenses incurred in the inspection may be assessed. This bill also makes sales of interests in undivided-interest subdivisions subject to a three-day right of rescission and requires the subdivision owner to inform a purchaser of this right. This bill was signed by the Governor on August 20 (Chapter 434, Statutes of 1988).

SB 2258 (Green), as amended on August 11, requires that the location of existing and adopted freeways be included on a map supplied by the owner, subdivider, or agent offering subdivided lands for sale or lease within a city or county which has adopted this bill by ordinance. This bill was signed by the Governor on September 24 (Chapter 1293, Statutes of 1988).

The following bills were dropped by their authors: *AB 3027 (Lancaster)*, which would have specified maximum fees for real estate broker and salesperson licensure; *AB 3114 (Lancaster)*, which would have repealed a specified prohibition involving commercial bank lending; *AB 2803 (Speier)*, which required delivery of a loan appraisal to a loan applicant; *AB 2185 (Wright)*, concerning contracts for membership camping; and *AB 4258 (McClintock)*, which would have clarified the exemption for clerical help from the broker licensing requirements.

LITIGATION:

In *Morris v. Department of Real Estate*, 88 D.A.R. 10659, No. A039355 (August 17, 1988), the First District Court of Appeal held that DRE's Real Estate Recovery Fund need not pay post-judgment interest to a claimant who has

received the maximum statutory award. The issue in the case was whether the statutory maximum recovery of \$20,000 per transaction imposed by Business and Professions Code section 10474(c) precludes payment of additional sums in postjudgment interest. Although section 10476 provides that 4% interest would accrue should the Fund be unable to pay claimants due to insolvency, the court reasoned that it would be anomalous to assume that the legislature intended to give 4% interest to claimants who, through no fault of their own, had to wait for payment until the Fund was solvent, but intended to give 10% postjudgment interest to claimants whose award went unpaid during a pending appeal.

In another case, the same court held that an investor defrauded by a California-licensed real estate broker was entitled to be paid from the Real Estate Recovery Account even though the broker discharged his debts in bankruptcy. The court said, "While it is true...that a debt which has been discharged in bankruptcy voids any judgment of personal liability based upon that debt..., it is also the case that discharge does not operate against a debt for obtaining money through...false representation, or actual fraud." *Rogers v. Real Estate Commissioner*, 88 D.A.R. 5693, No. A037866 (First Dist., May 2, 1988).

In *Mullen v. California State DRE*, 88 D.A.R. 11481 (August 4, 1988), the Second District Court of Appeal upheld disciplinary action taken against a real estate broker who cancelled his client's escrow account without authorization from the client. Following an administrative hearing, DRE revoked Mullen's license for thirty days, restricted it thereafter, and ordered him to pay damages to his client. Mullen filed a petition for writ of mandate, seeking to set aside DRE's order; the trial court denied the petition. The appellate court affirmed, finding that the penalty assessed against Mullen was not an abuse of discretion by the DRE, in light of Mullen's betrayal of his client's trust in disbursing the funds without his client's approval.

FUTURE MEETINGS:

To be announced.

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:

Proposed Escrow Law Regulations. In 1985, section 6521 of the Financial Code was amended to provide that, notwithstanding the Escrow Law (commencing with section 17000 of the Financial Code) or any other provision of law, a savings association or service corporation may act as an independent escrow agent in connection with the sale, transfer, encumbering, or leasing of real or personal property. In April 1987, the Assembly adopted a resolution requesting the DSL to promulgate and adopt regulations substantially similar to the provisions of the Escrow Law for the purpose of administering amended section 6521(a) of the Financial Code.

Thus, in August, the DSL published its intent to adopt numerous new sections in its regulations, which appear in Chapter 2, Title 10, California Code of Regulations (CCR). The new sections implement the new authority of savings associations to act as escrow agents. After a public comment period ending on September 26, the Department adopted the new regulations, and is currently in the process of preparing the rule-making file for submission to the Office of Administrative Law (OAL).

Proposed Changes to DSL's Public Information Regulations. In September, the DSL noticed its intent to amend sections 102.200, 102.201, 102.202, and 102.203 of Article 2, Subchapter 2, Chapter 2, Title 10 of the CCR, to update the regulatory provisions related to information available to the public, by adding various terms brought into existence through the recodification of the Savings Association Law effective January 1, 1984 (Chapter 1091, Statutes