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have specified maximum fees for real estate broker and salesperson licensure; *AB 3114 (Lancaster)*, which would have repealed a specified prohibition involving commercial bank lending; *AB 2803 (Speier)*, which required delivery of a loan appraisal to a loan applicant; *AB 2185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 postjudgment 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 rulemaking 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

of 1983). Editorial amendments are also proposed to restructure the regulations for clarity and to provide correct Financial Code references to reflect the changes in the law. The Department accepted written comments on the proposed regulations until October 17.

Proposed Appraiser Regulations Effective. DSL's proposed changes to its Appraiser Classifications and Qualifications regulations (Subchapter 4, Article 3, Chapter 2, Title 10 of the CCR) became effective thirty days after their August 23 filing with the Secretary of State. (See CRLR Vol. 8, No. 2 (Spring 1988) p. 90 for complete background information on these regulatory changes.)

FSLIC Deficit Increases. In September, the U.S. Department of the Treasury announced it has begun its own investigation of the ever-increasing problem of insolvency of savings institutions across the country. Currently, more than 500 savings and loans nationwide are insolvent. The cost of bailing out these institutions has been conservatively estimated by Congress' General Accounting Office at a staggering $40-$50 billion. However, the Federal Savings and Loan Insurance Corporation (FSLIC), which has the clean-up responsibility, suffered a $14 billion deficit in 1987 and had already exceeded that amount by September 1988. FSLIC is now compelled to issue promissory notes to be used as capital by savings and loans which FSLIC has merged. According to many observers, a rescue of the S&L industry and a tightening of S&L investment authority must be the first order of business for the new President.

LEGISLATION:

AB 4252 (Sher) amends sections 1917.320, 1917.330, 1917.331, and 1917.711 of the Civil Code. Existing law provides for shared appreciation loans for senior citizens in the form of a fixed monthly annuity payment to the homeowner offered at a below-market rate of interest and secured by the refinancing of the owner-occupied real property in connection with which the lender has a right to receive a share of the future appreciation in the value of the property. Repayment of the total loan, including accrued principal, interest, and a share of the future appreciation of the home is deferred until a "maturity event" which could be the borrower's death, or when the property is sold or refinanced.

This bill provides that if the maturity event is either cessation of occupancy of the property by the borrower or the death of the borrower, the term shall be extended until the earlier of the sale or refinancing of the property or twelve months after the occurrence of the maturity event. AB 4251 also allows a shared appreciation loan to be called if the home is rented to a third party or is abandoned as a residency by all coborrowers. It provides that the projected loan amount may not be less than 75% of the estimated fair market value of the borrower's home at the end of the borrower's life expectancy, as specified, and provides that the lender may impose a minimum cap of $2,500 on the amount of the monthly annuity payment in calendar year 1989, to be adjusted by the Consumer Price Index thereafter annually, as specified. If the calculated monthly annuity exceeds the cap, the bill permits the lender to limit the actual monthly annuity payment to an amount not less than the cap. This bill provides that the total loan obligation includes not only the net original loan, total monthly annuity payments received by the borrower, interest on all outstanding amounts, and actual contingent interest, but also interest at the prevailing rate, as disclosed to the borrower on all of these amounts from the date of the maturity event until the outstanding loan obligation is repaid in full. The bill specifies, and declares as existing law, a lender's ability to provide a shared appreciation loan based solely on the value of the real property upon which the borrower's dwelling is situated, secured only by the real property and not the improvements, with the lender's actual contingent interest based on the land value alone. This bill was signed by the Governor on September 26 (Chapter 1406, Statutes of 1988).

The following is a status update on bills discussed in detail in CRLR Vol. 8, No. 3 (Summer 1988) at page 96:

SB 2470 (Vuich) amends section 10012 of the Financial Code. This section currently authorizes, on and after July 1, 1987, a foreign (national) savings association incorporated under the laws of the regional western states and which is not directly or indirectly controlled by either a foreign (national) holding company with its principal place of deposits located in a state outside of those regional western states, to conduct the business of a savings association in California or to acquire control of a California association. This bill provides that a foreign (national) holding company with its principal place of deposits may acquire control of a California savings association. SB 2470 was signed by the Governor (Chapter 467, Statutes of 1988).

AB 2855 (Bane), as reported in CRLR Vol. 8, No. 3 (Summer 1988) at page 96 and Vol. 8, No. 2 (Spring 1988) at page 91, was signed by the Governor (Chapter 718, Statutes of 1988).

AB 3669 (Bane) would have amended section 8009 of the Financial Code, which currently provides that the Savings and Loan Commissioner and his/her employees shall not disclose any information acquired by them in the discharge of their duties, except as required by law, regulation, or court order. This bill died in the Senate Banking and Commerce Committee.

AB 4203 (Moore) would have amended section 1364 of the Financial Code, which currently authorizes savings associations and commercial banks to invest in evidences of indebtedness of companies incorporated in the United States and which meet specified gross and net income requirements. This bill would have relaxed those requirements in certain circumstances, but was vetoed by the Governor on July 15.

LITIGATION:

The U.S. Supreme Court has granted certiorari to review the Fifth Circuit's decision in *Coit Independence Joint Venture v. FirstSouth, F.A.*, 829 F.2d 563 (5th Cir. 1987), *cert. granted*, 108 S.Ct. 1105 (1988), which upheld the dismissal of a creditor's suit against a federal savings association in receivership for failure to exhaust administrative remedies. The Fifth Circuit held that under federal banking laws, the FSLIC has exclusive jurisdiction over suits brought by creditors against savings associations under FSLIC receivership. Therefore, creditors must first present their suits to the FSLIC and then make appeal to the Federal Home Loan Banks Board before the case may properly be brought in federal court under the Administrative Procedure Act. The court stated that although other courts have held differently, the Fifth Circuit has held FSLIC's jurisdiction is exclusive. Relying on its recent decision in *Woods v. Federal Home Loan Bank Board*, 826 F.2d 140 (5th Cir. 1987), the court rejected Coit's argument that the required procedure violates due process in that the FSLIC would act as both party and judge.