on Banking, Finance and Bonded Indebtedness.

AB 1822 (Frazee). Under existing law, real estate brokers engaging in certain activities with respect to transactions involving the sale of real property sales contracts or debt instruments secured by real property, and meeting either one of two prescribed criteria, are subject to special requirements as to advertising, reporting, trust funds, and disclosure. As introduced March 8, this bill would add an additional criterion under which a real estate broker is subject to these special requirements. This bill passed the Assembly on May 16 and is pending in the Senate Business and Professions Committee.

AB 360 (Johnson). Existing law does not require an advertisement for a loan which utilizes real property as collateral to disclose the license under which the loan would be made or arranged. As amended May 6, this bill would require that disclosure with respect to advertisements disseminated primarily in this state placed by any person. This bill would also prohibit any real estate licensee, among others, from placing an advertisement disseminated primarily in this state for a loan unless the license under which the loan would be made or arranged is disclosed. This bill passed the Assembly on April 11 and is pending in the Senate Business and Professions Committee.

SB 630 (Boatwright). Existing law regulates persons involved in the sale, lease, or exchange of real property including real estate salespersons and real estate brokers, as well as persons involved in the sale, lease, or exchange of mineral, oil, and gas property. As amended April 29, this bill would provide that for the purpose of these provisions, the term "employee" shall include independent contractors, and the term "employ" shall refer to the contractual relationship of both employees and independent contractors. The bill would also provide that all obligations created under those provisions and all regulations issued by the Real Estate Commissioner relating to employees shall also apply to independent contractors. This bill passed the Senate on May 9 and is pending in the Assembly Consumer Protection Committee.

AB 814 (Hauser). Existing law provides that certain provisions of the Real Estate Law do not apply to any stenographer, bookkeeper, receptionist, telephone operator, or other clerical help in carrying out their functions. As introduced February 27, this bill would provide that these provisions do not apply to any clerk or other employee of a condominium complex who is responsible for accepting or arranging reservations for transient occupancy of less than thirty days or who acts as a cashier for the collection of deposits or rental fees for transient occupancy of less than thirty days. This bill is pending in the Assembly Consumer Protection Committee.

AB 776 (Costa), as introduced February 26, would authorize DRE, using funds from the Education and Research Account in the Real Estate Fund, to develop a research report to explore options for the state to provide for a residential mortgage guarantee insurance program for low-downpayment mortgages for California first-time homebuyers not currently served by the private market or by the Federal Housing Administration, and for low- and moderate-income rental housing. This bill is pending in the Assembly Committee on Housing and Community Development.

AB 1234 (Frazee), as amended May 14, would provide that, within the limits of the fees charged and collected under the laws regulating real estate, and within the limits of prudent administration, the Real Estate Fund shall be maintained at a level equal to DRE's projected annual budget. This bill would also provide that the money in the Education and Research Account in the Real Estate Fund is available for appropriation in awarding research grants or fellowships in the field of real estate to any accredited university or college in this state, or to any graduate student or faculty member thereof, or to any other person residing in this state qualified to perform that research. This bill is pending in the Assembly Higher Education Committee.

DEPARTMENT OF SAVINGS AND LOAN

Commissioner: Wallace T. Sumimoto
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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 Chapter 2, Title 10 of the California Code of Regulations (CCR).

MAJOR PROJECTS:

Commissioner Davis Resigns. DSL Commissioner William D. Davis resigned on April 30; no official reason was given for his resignation. Business, Transportation and Housing Secretary Carl D. Covitz designated Wallace T. Sumimoto, Assistant Savings and Loan Commissioner, to assume the post of DSL Commissioner, effective May 1, 1991. Sumimoto has been with DSL for 25 years.

Proposed Regulatory Changes. In early June, DSL announced its intent to amend its conflict of interest code, which is contained in section 102.300, Chapter 2, Title 10 of the CCR. Pursuant to Government Code section 87306, amended section 102.300 will designate DSL employees who must disclose certain investments, income, interests in real property, and business positions, and who must disqualify themselves from making or participating in the making of governmental decisions affecting those interests. DSL's new conflict of interest code will conform to the model code adopted by the Fair Political Practices Commission, section 18730, Division 6, Title 2 of the CCR. DSL accepted comments on its proposed regulatory changes until July 22.

Columbia Savings & Loan. Federal regulators who are selling off the assets of failed Columbia Savings & Loan may have a chance to turn S&L failure into environmental success. The key to preservation of the Headwaters Forest, the largest forest of privately-owned redwood trees, may be millions of dollars in junk bonds seized by federal regulators in January, when Beverly Hills-based Columbia failed. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 128 and Vol. 11, No. 1 (Winter 1991) pp. 104-05 for background information.) The bonds were originally issued by Pacific Lumber Company, which owns the forest in Humboldt County in northern California, as part of the deal in which Maxxam Inc., a conglomerate based in Houston, acquired the lumber company in 1985.

State officials are now negotiating with the federal regulators to buy the bonds at a deep discount. Under the deal being negotiated, the state would give the bonds to Maxxam as part of an offer for the land. Loggers have never entered Headwaters Forest, and many of its trees are 1,700 years old and stand taller than the Statue of Liberty. The state would preserve them by converting the land into a wildlife sanctuary.

RTC Plans to Rescue 200 More S&Ls. Recently aided by an infusion of $30 billion in taxpayer funding, the Resolution Trust Corporation (RTC), the

federal savings and loan bailout agency, announced on March 25 plans to rescue 215-225 more S&Ls and give away as many as 3,000 repossessed homes to nonprofit groups. (See CRLR Vol. 11, No. 2 (Spring 1991) p. 129 for background information.)

RTC also announced policy changes designed to speed the sale of real estate, loans, junk bonds, and other assets inherited from failed thrifts. Among other things, the policy changes would allow agency representatives to authorize real estate sales for 20% below their appraised value immediately and 40% discounts after six months of trying to sell at higher prices. Previously, RTC policy limited the sale of properties to not less than 20% below their appraised value, and only after nine months of trying to sell at higher prices. Also, to avoid holding sour loans and repossessed real estate, RTC will set prices on S&L assets and sell them to any buyer who meets the price on the day an S&L is seized. Generally, the profitable banks and S&Ls that acquire branches and deposits of failed thrifts are not interested in loans and repossessed real estate. In order to unload 9,000 single-family homes, RTC will hold 60 sealed-bid auctions. If the agency cannot get an acceptable price, it will try to give the properties away to nonprofit organizations and state and local agencies which work to provide affordable housing for the poor.

RTC set a goal of selling $65 billion of its $155 billion in assets within six months. RTC sold $128 billion in failed S&L assets last year. On March 25, RTC solicited bids for 90 S&Ls in 24 states, bringing the number of available S&Ls to 97. The remaining 98 S&Ls were to be advertised by June 30. Winning bidders will be those that require the least government assistance.

Among the failed California S&Ls that will be put up for sale during the second quarter is Rancho Bernardo Federal Savings Bank, which was seized by federal regulators in October 1990 after suffering huge losses on a joint real estate venture. Santa Barbara Federal Savings & Loan, Imperial Federal Savings of San Diego, Liberty Federal Savings Bank in Montebello, and Pacific Coast Federal Savings in San Francisco will also be sold in the coming months.

The federal Office of Thrift Supervision expects at least 160 more S&Ls to fail. L. William Seidman, chair of RTC, said the agency will announce its revenue requirements for the fiscal year starting October 1, 1991 in June. He stated that "the only thing we can say for sure is we'll need more [money]."

LEGISLATION:

AB 938 (Speier), as amended May 15, would require banks, savings associations, and credit unions to process credits to deposit accounts before processing debits, including fees for dishonored checks. The bill would also require specified items drawn on an account with insufficient funds to be presented at least twice before the item is returned unpaid, unless otherwise requested by the customer who deposited the item. The bill would limit the fees which financial institutions can charge for dishonored checks. The bill was rejected by the Assembly Committee on Banking, Finance and Bonded Indebtedness on May 21, granted reconsideration, and passed by the Committee on May 24; at this writing it is pending on the Assembly floor.

AB 1463 (Hayden), as introduced March 7, and *SB 950 (Vuich)*, as introduced March 8, would make technical, clarifying changes in provisions specifying the maximum percentage of assets that an association chartered by this state under the Savings Association Law, including a savings bank, may invest in specified loans made for agriculture, business, commercial, or corporate purposes. AB 1463 is pending in the Assembly Banking Committee; SB 950 is pending in the Senate Committee on Banking, Commerce and International Trade.

AB 697 (Lancaster). Existing law imposes requirements relating to the sale, merger, and conversion of state banks and state savings associations, and provides that if the bank or savings association acquires any asset or liability, or becomes engaged in any activity which was permitted to the selling, disappearing, or converting savings association or bank, but which is prohibited to it, the Superintendent of Banks or the DSL Commissioner may permit a reasonable period of time, not to exceed six months, within which the savings association or bank shall divest itself of the asset, liability, or activity or to conform it to law. As amended April 30, this bill would increase the period of time in which a bank or savings association may accomplish the divestment or conformity to a period not to exceed twelve months. This bill would also allow the Superintendent or Commissioner, on a case-by-case basis, to permit a bank or savings association a reasonable period of time in excess of twelve months upon a specified showing. This bill passed the Assembly on May 29 and is pending in the Senate Banking Committee.

AB 1304 (Lempert), as amended May 20, would amend Financial Code section 6050 to provide that the register of stockholders or members, the books of accounts, and the minutes of a savings association are subject to inspection upon written demand by any stockholder, member, or group of stockholders or members, who hold of record voting shares having a cost of not less than 1% of the outstanding voting shares and who have been holders of record of the voting shares at least six months before making the written demand, for a purpose reasonably related to the stockholder's or member's interest, subject to specified limitations. This bill is pending in the Assembly Ways and Means Committee.

The following is a status update on bills reported in detail in CRLR Vol. 11, No. 2 (Spring 1991) at page 129:

AB 1594 (Floyd), as introduced March 8, would repeal the Savings Association Law and abolish DSL on January 1, 1993. The bill would prohibit any savings association from doing business in this state on or after that date without a federal charter, and would require savings associations converting to a federal charter on or after January 1, 1992, to file specified evidence of the federal charter with the Secretary of State. This bill is pending in the Assembly Banking Committee.

AB 1593 (Floyd), as amended April 18, and *SB 506 (McCorquodale)*, as amended April 8, would both transfer the licensing and regulatory functions of DSL, the State Banking Department, and the regulation of credit unions by the Department of Corporations to a Department of Financial Institutions, which both bills seek to create; both bills would abolish DSL. AB 1593 is pending in the Assembly Banking Committee and SB 506 is pending in the Senate Banking Committee.

AB 1596 (Floyd). The California Public Records Act requires that records of state and local agencies be open to public inspection, with specified exceptions, including specified documents filed with state agencies responsible for the regulation or supervision of the issuance of securities or of financial institutions. As amended April 30, this bill would revise this exception and limit it to records of any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, when the records are received in confidence, are proprietary, and their release would result in an unfair competitive disadvantage to the person supplying the information or the records constitute filings or reports

whose disclosure would be counterproductive to the regulatory purpose for which they are used. This bill is pending in the Assembly Governmental Organization Committee.

SB 893 (Lockyer), as introduced March 7, would, among other things, authorize the establishment of the California Financial Consumers' Association, a private, nonprofit public benefit corporation established to inform and advise consumers on financial service matters, represent and promote the interests of consumers in financial service matters, intervene as a party or otherwise participate on behalf of financial service consumers in any regulatory proceeding, sue on behalf of members in regard to any financial service matter, and take related actions. This bill is pending in the Senate Banking Committee.

AB 2026 (Friedman). Existing provisions of the Savings Association Law prescribe various criminal offenses and penalties for violations thereof, and provide for forfeiture of property or proceeds derived from these violations. As introduced March 8, this bill would, among other things, expand the list of criminal offenses, as specified, the violation of which subjects the violator to the forfeiture provisions. This bill is pending in the Assembly Public Safety Committee.

LITIGATION:

On March 26 in *U.S. v. Gaubert*, No. 89-1793, the U.S. Supreme Court held that the federal government may not be sued for damages when efforts by regulators to rescue troubled savings and loan associations go awry. Thomas Gaubert, former owner of Independent American Savings Association (IASA), brought a $25 million suit against federal regulators under the Federal Tort Claims Act (FTCA), alleging that their management led to IASA's failure. (See CRLR Vol. 11, No. 1 (Winter 1991) pp. 105-06 for background information.) The government argued that it is immune from suit for its activities in operating the failed thrift under the "discretionary function" exception to the FTCA in 28 U.S.C. section 2680(a); the trial court agreed, but the Fifth Circuit reversed, finding that the regulators' actions were not "policy decisions" which fall into the exception, but "operational actions."

The Supreme Court reversed, holding that "[d]iscretionary conduct is not confined to the policy or planning level....Day-to-day management of banking affairs, like the management of other businesses, regularly requires judgment as to which of a range of permissible courses is the wisest."

DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

Executive Director: Steven Jablonsky (916) 322-3640

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 California workers.

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. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

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 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 65. In July 1990, in *California Labor Federation, et al. v. Cal-OSHA*, No. A048574, the First District Court of Appeal held that the Safe Drinking Water and Toxics Enforcement Act of 1986 (Proposition 65) is a state law governing occupational safety and health pursuant to the State Occupational Safety and Health Plan Initiative (Proposition 97), and ordered Cal-OSHA to incorporate into its California State Plan for Occupational Safety and Health (State Plan) standards which provide the protections of Proposition 65 to all employees covered by that initiative. In October 1990, the California Supreme Court denied Cal-OSHA's petition for review, thus paving the way for Cal-OSHA to comply with the appellate court's order and Proposition 65. (See CRLR Vol. 11, No. 1 (Winter 1991) p. 109; Vol. 10, No. 4 (Fall 1990) p. 133; and Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 154 for extensive background information.)

During OSB's April 18 business meeting, Executive Director Steve Jablonsky reported on staff's progress in developing regulations to implement and apply Proposition 65 to the workplace. Staff had held several meetings with legal counsel, and had convened an advisory committee on April 16; however, no consensus had been reached regarding a regulatory proposal. Jablonsky also reported that the California Labor Federation submitted a draft Proposition 65 regulation and petitioned OSB to adopt it on an emergency basis at the April meeting.

Jablonsky also noted that Stephen Berzon, attorney for petitioners, indicat-