Real Estate Law relating to business opportunities (and hence from licensure as a real estate broker) any person who engages in specified acts for another or others in connection with the sale, purchase, or exchange of radio, television, or cable enterprises, as specified. This bill was signed by the Governor on September 10 (Chapter 729, Statutes of 1990).

*AB 3183 (Bader).* Existing law authorizes a person licensed as a real estate broker to sell or offer to sell, buy or offer to buy, solicit prospective purchasers of, solicit or obtain listings of, or negotiate the purchase, sale, or exchange of any mobile home only if the mobile home has been registered under the Mobilehomes-Manufactured Housing Act of 1980 for at least one year. As amended August 27, this bill deletes the requirement that the mobile home be registered for at least one year under the Act. This bill was signed by the Governor on September 30 (Chapter 1689, Statutes of 1990).

*AB 3332 (Peace),* as amended August 14, would have prohibited a mobile home park owner from accepting an offer to purchase the park unless the park owner gives written notice to any resident organization, as specified, and gives resident organizations ten days from the date of receipt of the required notice to make an offer to purchase the park, during which time the park owner is precluded from accepting the written offer to purchase. This bill was vetoed by the Governor on September 27.

*AB 3594 (Speier),* as amended July 3, makes it grounds for revocation or suspension of a license for a real estate licensee acting as an agent for the buyer to fail to disclose his/her direct or indirect ownership interest in any property, as specified, to the buyer. This bill was signed by the Governor on September 25 (Chapter 1335, Statutes of 1990).

*SB 2397 (Craven)* requires an appraisal of each parcel of real property which relates to a real property security agreement to be made by a real property securities dealer or an independent appraiser, unless the purchaser states to the dealer in writing that he/she will obtain his/her own appraisal; and requires a copy of an appraisal made by the dealer or his/her agent to be delivered to the purchaser prior to the time the purchaser becomes obligated. This bill was signed by the Governor on July 9 (Chapter 200, Statutes of 1990).

*SB 2491 (Vuich).* 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 prescribed additional criteria, are subject to special requirements as to reporting, trust funds, and disclosure. Among these additional criteria is that the aggregate amount of subject transactions total more than $2,000,000 in any twelve-month period. Certain of these transactions, however, are not counted for purposes of the above total, including loans made or purchased by specified entities, including banks, savings and loan associations, and industrial loan companies. As amended August 22, this bill additionally excludes loans made or purchased by, among others, any savings bank or savings association holding company or subsidiary thereof, personal property brokers, commercial finance lenders, and consumer finance lenders. This bill was signed by the Governor on September 29 (Chapter 1534, Statutes of 1990).

*AB 527 (Hannigan),* as amended June 21, enacts the Real Estate Appraisers' Licensing and Certification Law and creates the Office of Real Estate Appraisers within the Business, Transportation and Housing Agency, to be administered by a director appointed by the Governor. The bill authorizes the appointment of a Real Estate Appraisers' Advisory Committee; specifies standards and procedures for licensure as a real estate appraiser and certification as a state certified real estate appraiser; and specifies certain provisions regarding licensing fees and continuing education requirements. This bill was signed by the Governor on August 10 (Chapter 491, Statutes of 1990).

*SB 910 (Vuich),* as amended August 13, provides that the salary of the director of the Office of Real Estate Appraisers created in *AB 527 (Hannigan)* is to be fixed by the secretary of the Business, Transportation and Housing Agency with the approval of the Department of Personnel Administration. This bill was signed by the Governor on September 18 (Chapter 1062, Statutes of 1990).

*SB 2380 (Presley)* requires the Office of Real Estate Appraisers created by *AB 527 (Hannigan)* to conduct a study on the feasibility of requiring all persons who perform or issue applications to be licensed. This bill also requires the Office to report to the legislature the results of that study on or before January 1, 1992. This bill was signed by the Governor on September 8 (Chapter 646, Statutes of 1990).

*AB 2242 (Costa),* as amended July 3, exempts from the definition of a real estate broker any person who is the employee of a property management firm retained to manage a residential apartment building or complex or court when performing specified functions under the supervision and control of a broker of record who is an employee of that property management firm or a salesperson licensed to the broker who meets requirements specified by the Real Estate Commissioner. This bill was signed by the Governor on September 14 (Chapter 925, Statutes of 1990).

FUTURE MEETINGS:
To be announced.

## DEPARTMENT OF SAVINGS AND LOAN

*Commissioner: William D. Davis*
*(415) 557-3666*
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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).

DSL Commissioner William Crawford retired from the Department on June 22. Governor Deukmejian appointed William D. Davis of Villa Park as the new Savings and Loan Commissioner.

MAJOR PROJECTS:

*DSL Budget Woes Continue.* DSL's budget for fiscal year 1990-91 is $5.5 million, with an allocation for 63 employee positions. This is a substantial decrease from last year's budget, which totalled $8.4 million and 124 staff positions. Mary Law, Chief Administrator for DSL, stated that presently the Department has a total of 37 employees. No new hiring is currently taking place because the Department is attempting to stabilize while determining its actual funding level.

The Department does not receive general taxpayer funding; instead, it relies on assessment fees it imposes upon state-chartered associations. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) p. 148 and Vol. 10, No. 1 (Winter 1990) pp. 99-100 for background information.) DSL assesses these fees in July of each year; this year, some state-chartered associations converted to federal charters before July 1 to avoid

DSL's assessment. DSL is now in the process of determining the amount of fees which will actually be collected to support its mandated functions.

*DSL Rulemaking.* On July 13, the Office of Administrative Law (OAL) approved DSL's proposed change to section 103.304, Title 10 of the CCR, which increases the filing fee for an application to acquire control of a savings and loan institution from $750 to $7,500.

*Columbia Savings & Loan: Another California Thrift Failure?* On September 10, the federal Office of Thrift Supervision (OTS) rejected the $3 billion sale of Columbia Savings and Loan's junk bond portfolio to Toronto-based Gordon America, stating that the deal (as then structured) carried undue risks for Columbia and taxpayers, and could violate last year's federal S&L bailout law. The Columbia sale would have required the ailing Beverly Hills-based thrift to finance 90% of the sale. Under the proposed terms of the deal, the Gordon group would make a $300 million down payment, with Columbia holding a $2.7 billion note. OTS criticized the bid process, saying that Columbia's management failed to seek all-cash bids, and failed to consider bids that would have allowed Columbia to benefit should the junk bonds regain some of their value.

Regulators also questioned whether the sale would comply with a requirement in the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) that savings and loans rid themselves of junk bonds by 1994. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 113 and Vol. 9, No. 4 (Fall 1989) pp. 99-100 for background information on FIRREA.) Columbia, which agreed to finance the sale over ten years, could have ended up with the junk bonds if the Gordon group defaulted. OTS asked Columbia to seek new bids with an emphasis on all-cash bids. However, DSL Commissioner William D. Davis, who must approve the deal along with OTS, said he believes that it may be hard to find bidders willing to pay cash.

Some thrift executives suggested that rejecting the deal means that governmental seizure of Columbia is imminent, and may require a significant taxpayer bailout. Indeed, OTS took the highly unusual move of suggesting in its September 10 statement that a government takeover is possible in light of the serious deterioration of Columbia's financial condition. According to the *Los Angeles Times*, government regulators believe Columbia is insolvent by a staggering $352 million.

Columbia's problems extend beyond OTS' rejection of the junk bond sale. In June, shareholders of the thrift sought the DSL Commissioner's approval to bring a derivative action against the directors of the corporation for gross mismanagement and breach of fiduciary duty in their operation of Columbia. Under a peculiar provision in California law, shareholders may not bring a derivative action against the directors of the corporation unless they first obtain the permission of the DSL Commissioner. Under California Financial Code section 6052, the Commissioner may approve such an action if: (1) the proposed action is brought in good faith; and (2) the action has a reasonable probability of benefiting the association and its stockholders and members. According to Ernest Kaufmann, attorney for shareholder Walter Untermeyer, Jr., DSL had never given permission to shareholders to bring a derivative action. However, at a September 21 hearing, the Commissioner granted the Columbia shareholders permission to pursue a derivative action. At this writing, the shareholders are preparing to file an amended complaint in Los Angeles County Superior Court.

*Federal S&L Bailout Cost to Taxpayers.* On July 30, L. William Seidman, chair of the federal Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC), said that the S&L bailout probably may end up costing "much in excess of" $500 billion—partly because the recent slump in the real estate market will push more thrifts over the financial edge. Seidman's figures are the highest estimate by any government official so far of the total cost of the S&L bailout effort. Private forecasters had been using such figures for months. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer) p. 148 and Vol. 10, No. 1 (Winter 1990) pp. 99-100 for background information.)

Seidman, testifying before the U.S. House of Representatives' Banking, Finance, and Urban Affairs Committee, said the government will need $100 billion from taxpayers in the fiscal year beginning October 1 to continue its current pace of closing down and selling off hundreds of failed savings and loan institutions. Of this amount, $40 billion is needed to cover losses on bad real estate loans at insolvent institutions (money that the public will never recover), and $60 billion is needed in so-called "working capital" to finance the takeover of institutions until all their assets are sold. The $100 billion for next year would be in addition to the $50 billion appropriated by Congress in August 1989, which was expected to be spent by the end of September 1990.

*Savings & Loan Sales.* On August 1, RTC announced plans to sell 130 more failed savings institutions and about $50 billion in securities and real estate properties by the end of the year. Last March, RTC Chair L. William Seidman announced RTC's effort to sell 140 S&Ls by June, and the agency did just that. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 148-49 for background information.) RTC expects that the new sales will bring to 337 the number of S&Ls sold or liquidated since the bailout began in 1989. This figure represents about 40% of the approximate 800 saving and loan associations expected to revert to the government in the foreseeable future. Bert Ely, an industry analyst who heads a private consulting firm, said that while the number of savings institutions sold seems fairly large, the sales to date represent only about one-sixth of the government's total obligation to individual depositors, and noted that the government sold the small, more marketable S&Ls first.

*Lincoln Savings Litigation.* On August 9, OTS filed a record-breaking $40.9 million claim for restitution against Charles H. Keating, Jr. and five associates, charging them with using phony tax shelters and dubious land deals to divert money from the failed Lincoln Savings and Loan Association. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 149-51 and Vol. 10, No. 1 (Winter 1990) pp. 113-14 for background information.) The complaint demanded that Keating, who now says he is penniless, provide a list of his assets within five days. On August 17, the Justice Department filed a lawsuit against Keating to enforce OTS' complaint. On August 22, U.S. District Court Judge Stephen Wilson ordered Keating to abide by the OTS complaint requiring him to disclose his assets within five days. On August 28, Keating filed an accounting of his personal finances with OTS, the contents of which have been kept confidential. A federal administrative law judge was scheduled to conduct a hearing on OTS' claim for restitution in October, with OTS Director T. Timothy Ryan making the final ruling later; his decision may be appealed in court.

Other action involving Keating includes an August 23 ruling by U.S. District Court Judge Stanley Sporkin dismissing the lawsuit brought by Keating to regain control of the failed Lincoln Savings and Loan Association. (See CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) pp. 149-50 for background information.) Judge Sporkin upheld the government's seizure of Lincoln, finding that the actions of Keating and his asso-

ciates amounted to "a looting" of Lincoln; and criticized Lincoln/Keating's lawyers and accountants for approving "clearly improper transactions."

Recently, two settlements totalling $25 million were reached in *In Re ACC/Lincoln Savings*, No. 589302 (Orange County Superior Court), the Lincoln investor class action suit. Two law firms which represented Lincoln, ACC, and Keating—Parker, Milliken, Clark, O'Hara & Samuelian, and Kaye, Scholer, Fierman, Hays & Handler—agreed to settle for $4.3 million and $20 million. respectively. Meanwhile, on September 18, the Los Angeles County grand jury issued a multicount criminal indictment alleging fraud, embezzlement, and securities violations against Keating and several others associated with ACC. The defendants have been arraigned and are now awaiting criminal trial.

LEGISLATION:

The following is a status update on bills reported in detail in CRLR Vol. 10, Nos. 2 & 3 (Spring/Summer 1990) at pages 150-51:

*AB 3643 (Johnston)*, as amended August 16, makes conforming changes in relation to federal law enacted in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; revises certain provisions of the Savings Association Law which prescribe various criminal offenses and penalties; makes it a felony for any person convicted of a felony offense involving dishonesty or breach of trust to participate in the affairs of a savings association, unless authorized by the prior consent of the Savings and Loan Commissioner, or for a savings association to permit that participation; makes it a felony for defined institution-affiliated parties to abstract or willfully misapply funds, property, or credit of a savings association; and makes it a felony for institution-affiliated parties to execute or attempt a scheme or artifice to defraud a savings institution or obtain its property by false or fraudulent pretenses.

This bill also prohibits savings associations and their subsidiaries from entering into certain kinds of contracts with defined institution-affiliated parties without the prior approval of the Commissioner, and specifies conditions for that approval.

This bill also prohibits savings associations from discriminating against employees and other persons acting on behalf thereof who report violations of savings associations or their officers, directors, or employees to the Commissioner, the Attorney General, or a district attorney. This bill was signed by the Governor on September 20 (Chapter 1118, Statutes of 1990).

*AB 4064 (Epple)*, as amended August 23, requires the Savings and Loan Commissioner, among others, to inform other supervisory officers and appropriate state and federal agencies of any enforcement actions, including but not limited to civil or criminal actions, cease and desist orders, license or authorization suspensions or revocations, or open investigations. This bill was signed by the Governor on September 18 (Chapter 1035, Statutes of 1990).

*SB 2494 (Vuich)*, as amended August 28, prohibits, until January 1, 1994, any financial institution or other person from offering to the public, at any retail branch office at which deposits are accepted, any security that is not investment grade, as specified. This bill also requires a financial institution, as defined, that sells to the public, at any retail branch office, any security which is not insured by a federal agency or instrumentality or by a private share insurance or guaranty arrangement, to provide a specified disclosure statement. This bill was signed by the Governor on September 30 (Chapter 1545, Statutes of 1990).

*SB 2163 (Hart)*, as amended July 6, would have required the Insurance Commissioner, the Superintendent of Banks, the Savings and Loan Commissioner, and the Commissioner of Corporations to adopt regulations governing ex parte communications, as defined, with respect to their departments; and would have permitted the issuance of a public notice adopting more stringent regulations governing ex parte communications when it is in the public interest with respect to particular proceedings to do so. This bill died in the Assembly Ways and Means Committee.

*SB 2364 (Russell)* would have required all financial institutions chartered or licensed by this state with accounts insured by the Federal Deposit Insurance Corporation to maintain complete loan and investment records as required by their state regulatory agency for the purpose of determining compliance with state law and federal insurance requirements. This bill died in the Senate Banking and Commerce Committee.

*SB 2609 (Boatwright)*, which would have prohibited savings associations from selling securities except as expressly authorized by law, died in the Assembly Finance and Insurance Committee.

*AJR 81 (Peace)* memorializes the President and the Congress of the United States to oppose any federal legislation to bail out investors who purchased bonds through the parent company of Lincoln Savings and Loan Association. This resolution was chaptered on August 30 (Chapter 104, Resolutions of 1990).

*SB 1213 (Keene)*, which would have exempted specified persons from the application of specified provisions of law relating to prohibited real estate acts, died in the Assembly Ways and Means Committee.

*SB 476 (Robbins)*, which specifies that time deposits include a time certificate of deposit, was signed by the Governor on September 29 (Chapter 1442, Statutes of 1990).

*SJR 21 (Watson)*, which would have memorialized the President and Congress to include anti-redlining provisions in any bailout of savings and loan associations, died in the Assembly Finance and Insurance Committee.

LITIGATION:

In *Arkansas State Bank Commissioner v. Resolution Trust Corporation, et al.*, 911 F.2d 161 (Aug. 28, 1990), the U.S. Court of Appeals for the Eighth Circuit ruled that the RTC may override Arkansas bank branching laws in approving the sale of a failed savings and loan, overturning a lower court ruling that the sale of Federal Independence Savings (Independence) to Worthen Bank and Trust violated Arkansas state law. At issue was an RTC regulation that permits banks making emergency acquisitions of insolvent thrifts to operate the branches of the thrift as bank branches. An Arkansas bank branching law limits banks to branches within their home counties. However, the RTC successfully argued that it has been granted broad rulemaking authority by Congress in its mission to maximize the returns and minimize the losses in resolving failed thrifts.