



tions), this law prohibits an insurer from cancelling those policies after they have been in effect for sixty days unless cancellation is based upon certain enumerated factors, and specified notice has been given.

SB 831 (Robbins) has been chaptered. The law exempts from licensure as an agent, broker, or solicitor under the Insurance Code employees of a creditor who secures and forwards information for the purpose of obtaining group credit life, credit disability, or involuntary unemployment insurance, or for enrolling individuals.

SB 6 (Robbins) would create a health coverage association to provide insurance to persons who are not otherwise able to obtain health insurance, and do not qualify for coverage through the state's Medi-Cal program. The bill would establish a seventeen-member California Health Coverage Association board to administer the program.

AB 151 (Stirling), introduced December 22, would prohibit motor vehicle liability insurers from requiring the name of an insured's spouse or other member of the insured's household to appear on the insurance policy, if insurance coverage is not extended to those persons.

Anticipated Legislation. A draft report written by Michael Strumwasser, special counsel to Attorney General John Van de Kamp, proposes several legislative changes, including repeal of the insurance industry's exemption from state and federal antitrust laws and restrictions on the ability of insurance companies to limit the cost of defending policyholders. Mr. Strumwasser also suggests that the Department assess the level of competition within the industry, and act to prohibit unreasonable rates.

RECENT MEETINGS:

At its November 6 meeting, the chairs of the several subcommittees of the Consumer Advisory Board updated the Board on the progress of each subcommittee's project.

The toll-free information/action number (800-233-9045) is in full operation from 8:00-5:00 on Monday through Friday to receive complaints from insurance customers. Personnel involved in this program are taking several insurance classes to familiarize themselves with common problem areas.

The Comparative Premium Survey of Automobile Insurance for California and the California Personal Lines Automobile Complaint Ratio Study for October 1986 were completed and copies

were distributed to Board members. The Department also printed one million additional copies of the Buyers Guide to Car Insurance, which will be distributed when individuals have their pictures taken for a driver's license.

The subcommittee studying the "senior citizen gap" (see CRLR Vol. 6, No. 4 (Fall 1986) p. 64) discussed a proposal to network senior citizen organizations. The subcommittee has received a favorable response from these organizations, and proposed that a hearing on this issue be held to air complaints and allow industry members accused of detrimental action to speak on their own behalf. The Department has held previous hearings addressing the issue which have resulted in cease and desist orders to the organizations involved.

In response to a concern that some senior citizens do not understand Medicare, the Department is preparing a brochure on "Medigap."

The subcommittee for industry members is still discussing various proposals (see CRLR Vol. 6, No. 4 (Fall 1986) p. 64).

The Consumer Advisory Board (CAB) has formed another subcommittee to address the issue of availability and affordability of private passenger automobile insurance programs. Leroy Mobley will chair this subcommittee.

Attendance has been a problem at recent CAB meetings. The November 25 meeting was devoted to solving this issue. After receiving three resignations from its members, CAB is in the process of evaluating applicants to return the Board to full strength. To solve its attendance problem, the Board established a predetermined schedule to meet on the first Thursday of every month beginning in February.

FUTURE MEETINGS:

To be announced.

DEPARTMENT OF REAL ESTATE

Commissioner: James A. Edmonds
(916) 739-3684

The Real Estate Commissioner is appointed by the Governor and is the Department's chief officer. 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, subdivision and commercial and business brokerage. Various subcommittees also provide advisory input.

The Department primarily regulates two aspects of the real estate industry: licensees (185,878 salespersons, 89,548 brokers, 15,538 corporations) and subdivisions.

Licensee examinations require a fee of \$25 per salesperson and \$50 per broker. Exam passage rates average 45% for salespersons and 53% for brokers. License fees for salesperson and broker are \$120 and \$165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales or leases of certain subdivisions, the Department protects the public by requiring that a prospective buyer be given a copy of the "public report." The report contains various disclosure statements relating to title, encumbrances and similar information. Recent legislation mandates that a purchaser be given the latest financial report for the project in addition to governing instruments and disclosure of any delinquent assessments. The commissioner will not issue the public report if the subdivider fails to comply with any provision of subdivision law.

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 \$10.

The California Association of Realtors (CAR), the industry's trade associa-



tion, 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:

Illegal Subdivisions: The Department has issued a warning that willful violation of the Subdivided Lands Law is cause for suspension or revocation of the real estate license of the violator. The act of illegal subdividing, whether performed by a real estate licensee or one who is not licensed, carries a criminal penalty.

The law, administered and enforced by the Department of Real Estate (DRE), defines a subdivision, in part, as "improved or unimproved land divided or proposed to be divided for the purpose of sale or lease or financing, whether immediate or future, into five or more lots or parcels." The law provides that any person who intends to offer subdivided lands within California for sale or lease shall file with the DRE an application for a public report. The purpose of the public report is to prevent fraud and misrepresentation in the sale or lease of subdivided land.

At present, the public report requirement is being avoided through the practice of "4 x 4 subdivisions." These illegal subdivisions are created when a broker suggests that an owner split a parcel of land into four parcels, which the broker then sells for the owner. The broker then suggests to the purchasers of the four parcels that each of them split their parcel into four parcels, and list the resulting subdivided parcels for sale with the broker. By taking this course of action the broker, although not an owner of the land, may have created a subdivision within the meaning of the law which requires the filing of an application with the Real Estate Commissioner for a public report. Such a willful violation of the law carries penalties of a fine not exceeding \$5,000 or imprisonment, or both.

Meeting with the Japanese Ministry of Construction. For the second year, the DRE met in Sacramento with representatives of the Ministry of Construction of the Japanese government. The public/private sector mission came to Sacramento to explore what the ministry characterized as the "California government's positive stance in providing guidance and establishing reliable frame-

works for the enhancement of efficiency, and adequate protection of the parties involved in real estate transactions."

Licensing Reciprocity. Currently, under section 10151.5 of the Business and Professions Code, if a foreign state requires residency as a condition for real estate licensure, residents of that state are not eligible to renew existing California real estate licenses or to apply for a new real estate license in California.

Exceptions to this provision include Nevada and Hawaii, two states which allow residents of California to obtain real estate licenses in those states. Recently, Idaho has been added to list of states offering reciprocity for California real estate licensees. Idaho residents are now eligible to renew existing California licenses or apply for new ones, and California residents have similar rights in Idaho.

Business Opportunities. The DRE Advisory Committee has warned real estate licensees that representing buyers and sellers in business opportunity transactions requires special care and knowledge. The Committee advised that even though a licensee has a "legal right" to represent buyers and sellers in business opportunity sales by being a real estate licensee, additional education and training is required in order to safely negotiate such a transaction. Courses in business appraisal, general accounting, small business management, taxation, business law, and business brokerage are recommended.

A licensee must realize that special knowledge is often needed for each type of business transaction and must wisely work only within the parameters of that expertise. There is more to the transaction than merely filling out the proper forms. The Committee warned that it is unethical to falsely claim expertise in any area of specialization within the real estate industry.

The Department also gave notice to those licensees involved in business opportunity transactions with dry cleaning establishments that the state Board of Dry Cleaning and Fabric Care will no longer regulate dry cleaners. Effective January 1, 1987, the Bureau of Home Furnishings in the California Department of Consumer Affairs began registering dry cleaning plants. Registration is not required for dry cleaning establishments which have current licenses on January 1, 1987 until their licenses come up for renewal.

New Regulations Covering Real Estate Recovery Account. On October 9, 1986, the DRE submitted to the Office of

Administrative Law (OAL) proposed sections 3100 through 3109 of Title 10 of the California Administrative Code. This regulatory filing consisted of 17 pages of regulations and 113 pages of rulemaking record. The proposed regulations concern the new procedure for submission of applications for payment from the Real Estate Recovery Account (see CRLR Vol. 6, No. 4 (Fall 1986) pp. 65-66 for background information).

Pursuant to Government Code section 11349.3, the Department was later notified that OAL disapproved the regulations for failure to comply with the "consistency" and "clarity" standards of Government Code section 11349.1. In addition, the Department failed to include in the rulemaking file a statement that DRE had complied with the mailing of notice provisions of Government Code section 11346.4(a)(1) through (4), nor was there any indication that DRE gave notice of its rulemaking to the Real Estate Advisory Commission as is required by Business and Professions Code section 10080.

Under Government Code section 11349.3, DRE has 120 days in which to rewrite and resubmit the regulations to OAL.

Other Proposed Regulatory Changes. On October 14, the OAL also disapproved the proposed amendments to sections 2792.16 and 2792.21, Title 10, of the California Administrative Code. Section 2792.16 provides for changes in assessment payments and section 2792.21 stipulates powers and duties of the governing body of the Homeowners Association (see CRLR Vol. 6, No. 4 (Fall 1986) p. 66 for background information).

OAL disapproved Section 2792.16 for failure to comply with the "clarity" standards of Government Code Section 11349.1. In particular, it determined that the language "...any exemption from the payment of assessments shall be in effect only until the earliest of the following events" appears in two paragraphs of the regulation followed by differing lists of events. Section 2792.21 contained an unnecessary change at subdivision (b)(1)(E).

The Department modified section 2792.16 in order to clarify its meaning, modified section 2792.21 to eliminate the unnecessary change, and published the modified amendments for public comment pursuant to Government Code section 11346.8(d). The Department gave notice that the entire rulemaking file was available for examination by the public for the statutory 15-day period which



REGULATORY AGENCY ACTION

commenced on November 13. The changes have been adopted and resubmitted to OAL.

New Regulations Covering Disclosure of Defects in Property. New legislation (commencing at Civil Code section 1102), which became effective January 1, 1987, limits the liability of real estate brokers for failure to disclose defects in the property they sell. The law was passed in the legislature last year in response to a California appellate court decision broadening brokers' liability for nondisclosure. In *Easton v. Strassburger*, 152 Cal. App. 3d 90, 199 Cal. Rptr. 383 (1984) agents were held liable for failing to disclose soil defects on property. The court held that a broker "had a responsibility to make more than a general inquiry of the seller." The decision has been interpreted to hold brokers liable not only for intentional concealment or misrepresentation of known defects, but also for failure to disclose defects they should have known about, thereby adopting a negligence standard.

The new law attempts to clarify that liability by setting forth a lengthy form which lists information brokers must ascertain from sellers and provide to potential buyers. The form requests information on the condition of the property, including drainage and flooding problems, and neighborhood noise. The law applies to real property transactions involving one to four residential units. The new legislation requires the broker to make the requisite inquiries, fill out the form, and have the seller sign it.

LEGISLATION:

AB 3746 (Lancaster-Montoya) becomes operative January 1, 1988. This bill establishes in law, for the first time, standards for the performance of real property appraisal services when the client specifies that a certified appraisal is desired. The standards are based on guidelines established by major appraisal organizations and may be enforced through civil actions or through injunction or other equitable relief. The use of a "certified appraisal" is not mandatory, but users can expect that when the designation of "certified" appears on an appraisal, the report was prepared pursuant to statutory standards.

AB 1034 (Connelly-Grisham) also becomes operative January 1, 1988. This bill will require that listing and selling agents in real estate transactions provide both buyers and sellers with specified written and oral disclosures. The listing agent must deliver a specified written

disclosure form to the seller prior to the time of listing, and the selling agent must deliver the same disclosure to the buyer as soon as practicable, but prior to execution of an offer. The disclosure form sets forth the various forms of agency relationships between buyers and sellers and real estate licensees, and the duties owed by these licensees, depending on their agency relationship to the buyer and seller. The buyer and seller must sign for receipt of the disclosure.

The bill will also require that licensees disclose to the buyer and seller, as soon as practicable, whether he/she is acting as the seller's agent, the buyer's agent, or a dual agent. Finally, licensees must confirm the agency relationship in writing in a contract to purchase or lease or in a separate writing executed by the seller, buyer, and the selling agency. The law will apply to real property transactions involving one to four residential units. The law is meant to eliminate many problems which occur when a broker represents both the buyer and the seller in a single deal.

SB 491 (Montoya), sponsored by the Department of Real Estate, becomes operative July 1, 1987 and requires mandatory education for licensees on agency relationships in real estate transactions. The bill requires that after July 1, 1987, all real estate licensees must include, among 45 hours of continuing education courses, a three-hour course in agency relationships; the required number of hours of courses related to consumer protection is reduced from 21 to 18.

The change will provide a means for ensuring that licensees have a better understanding of the subject of agency and their duties and responsibilities as agents. The Department will publicize both the changes in educational requirements and the agency disclosures to be made in real property transactions involving one to four residential units throughout 1987.

Commissioner Edmonds stated that DRE is currently establishing the regulatory procedures and course approval mechanisms necessary for implementation of both of these agency-related bills. He believes that both licensees and consumers will significantly benefit from the new legislation. The Commissioner has also sent a letter to the California Association of Realtors setting forth his thoughts on enforcement of the new provisions in the law addressing agency relationships.

RECENT MEETINGS:

The Department of Real Estate, in

conjunction with the California Association of Realtors, met in San Diego on October 10. Discussion topics included clarification of existing licensing and continuing education requirements, and the new requirements under SB 491 (Montoya).

DRE also clarified advertising requirements. Many inquiries are received by the Department regarding advertising of a licensee's availability to perform a service for which a real estate license is required. The applicable law is codified in section 10140.6 of the Business and Professions Code, and requires the licensee to include the appropriate designation (*i.e.*, broker, agent, realtor) in the advertisement and to disclose that the licensee is performing acts for which a real estate license is required. Further, a salesperson must also include the name of his/her employing broker (pursuant to Commissioner's Regulation 2770) in any advertisement in which the salesperson's name appears. These provisions must appear despite the fact that an agent's firm is easily recognized as a real estate firm.

FUTURE MEETINGS:

To be announced.

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 9001 of the California Financial Code. Departmental regulations are in Title 10, Chapter 2, of the California Administrative Code.

MAJOR PROJECTS:

Commissioner's Actions. February, 1987 marks the end of William Crawford's second year as the Commissioner of the Department of Savings and Loan. During his second year, Commissioner Crawford has taken a tough regulatory stance toward savings and loan institutions in an effort to eliminate detrimental factors within the industry. Since