

**Redistributing Wealth – Taking Money away From  
Contractors and Subcontractors and Giving it to the Banks**

On February 25, 2011, the Illinois Supreme Court issued an opinion that diminished mechanics lien rights for contractors, subcontractors, laborers and material suppliers in Illinois. The Court's holding in *LaSalle Bank v. Cypress Creek* will mean that when there are insufficient proceeds from a foreclosure sale to pay both lenders and mechanics lien claimants, from now on banks and other lenders will receive the lion's share and mechanics lien claimants will often receive much less. This means many contractors and subcontractors risk not being paid for well performed work even though they have perfected their mechanics lien claims.

Section 16 of the Illinois Mechanics Lien Act has always described how to share money from a financially troubled project between a lender and mechanics lien claimants. Lenders have always been preferred to the extent of the value of the land and the lien claimants were always preferred to the value of the improvements erected on the property – which makes sense, as they supplied the labor and materials. That is not the law in Illinois any more.

The *Cypress Creek* opinion ignores the beginning of section 16 which, paraphrasing provides: “no lender shall be paid from sale proceeds until the lien claimants are paid.” Instead, the banks now have priority not just in the value of the land, but also, in the value of all improvements to the land, except for the improvements made by the unpaid lien claimants. The new rule of law gives a lender two opportunities to siphon off money from the proceeds of a foreclosure sale that is insufficient to pay all claims. This was never the intent of Section 16. As stated in the dissenting opinion:

- a. by putting the lender on an equal footing with other unpaid lien claimants, the effect is to improperly increase the lender's *pro*

*rata* percentage of the proceeds to more than it should be entitled under Section 16;

- b. the lender is not a material provider or a contractor so it should not be considered the equivalent of a lien claimant; and
- c. Section 16 of the Illinois Mechanics Lien Act clearly distinguishes between a lender and a lien claimant and makes it clear how to allocate proceeds between them.

The immediate consequence of this decision will be that lenders will no longer negotiate with mechanics lien claimants to pay their lien claims in a foreclosure. Also, lien claimants will be reluctant to assert their mechanics lien rights, knowing the banks are going to get the lion's share of any sale proceeds. The end result will be the financial destruction of many contractors and subcontractors in the state or, now that they have more limited lien rights, owners will either pay for work in advance, or many projects will simply not be built.