

NEW REPS

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Illinois Construction Stuff and Stuff

By Norm Cowie, CCE

The mechanics lien law is an evolving beast, morphing into something slightly different every few years or so since being written into law more than one hundred years ago.

Some of the changes are results of politicians either being idiots or fixing the idiocy of other politicians, such as allowing no-lien contracts to be binding on third parties without even informing them...then making no-lien contracts unenforceable and against the public policy... then saying, oh, wait, you can have no-lien contracts, but you have to notice the third party first (without bothering to say what constitutes proper notification).

Well, the judicial branch of our wonderful Illinois government was jealous that the legislative branch was hogging all of the idiocy, so they jumped into the fray with the Illinois Supreme Court's decision in LaSalle Bank v. Cypress Creek, drastically changing the landscape for foreclosures.

Prior to Cypress Creek, Section 16 of the Mechanics Lien Act split the proceeds of a sheriff's sale so that the bank would be preferred only as to the value of the property prior to the construction and lien claimants would be next in line for the value of the improvements, and the rest, if anything, going to the bank and owner.

Example: Let's say the unimproved property was worth one million at the time of the bank loaning the owners five million to improve the property. Contractors, subcontractors and material suppliers then furnish three million in improvements. But the job goes sour, everyone liens the project and after foreclosure they hold a Sheriff sale.

Then let's say the property sold for three and a half million at the Sheriff sale. The bank would get the first million, that being their preferred amount based on the value of the property when they loaned the money. The remaining two and a half million would then be split pro-rata (83%) among the lien claimants, with the bank getting nothing on their other four million.

This is a simplistic explanation, and not so realistic since it would be doubtful that everyone would have done all of this work without there being any payment. So excuse me for that.

But then the Cypress Creek ruling hit on February 25, 2011, with the Illinois Supreme Court totally ignoring the language of Section 16, ruling that in the above situation the bank will get the lion's share, leaving little or nothing for other lien claimants.

So not only do banks hold all of the cards already...even getting bailed out for their own misguided practices...but now they get preferential treatment even when they already control the purse strings on a project.

And a contractor or sub-contractor, who is forced to bid blindly against other contractors, taking on jobs with razor thin margins, and who has to pay his workers pay and benefits every week, and incur liability to subcontractors and suppliers, has to just pray his payout won't be cut or delayed by the owner or architect or general contractor.

And if the job goes bad for reasons outside his control (the owner makes too many changes, taking the job over budget, or the bank gets cold feet and

yanks financing, or the owner loses a tenant), there is virtually no safety net for getting paid. If someone liens a job, the bank will just shrug, knowing that at least they'll get their money.

Soon after this shocking decision, concerned advocates tried to reverse it by changing the lien statutes with HB3636, amendment #1. Unfortunately the banks were able to kill this effort, so right now we are left with vastly reduced protection under the lien act.

So the lien act morphed again, and it's an uglier version.

Will suppliers and subcontractors react by demanding additional security? Will they require payment prior to shipment or work? It depends. For me, I'm keeping those options open.

Okay, I'm out of room. I just finished a new book, a caveman humor book called *Bonk & Hedz, a caveman...and woman...story*. It will be up soon on Kindle and the Nook (hopefully)—maybe within a week or two. Right now, I have five humor books available on Kindle, with four of them costing just ninety-nine cents each (for now). Just Google my name and Amazon to find my author page.

I think I can safely guarantee you a buck's worth of entertainment.

—Norm

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SunGard **GET PAID** Users Group Meeting

Date: August 18, 2011
Location: NACM Midwest
3005 Tollview Drive, Rolling Meadows, IL 60008
Time: 8 a.m. – 4 p.m.

Go to www.nacmidwest.org for updates and registration.

Open Forum Discussion Topics

- GET PAID Updates and Enhancements
- Effective Collection and Deduction Management Strategies
- Cash Application/Auto-Cash Processing in Real-time
- Best Practices in Dashboards and Reporting
- Advanced Applications of GET PAID

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