


# snap decision equals DISASTROUS consequences

Please support an amendment to Section 16 of the Mechanics Lien Act to restore the original intention of this Act prior to the Cypress Creek decision by the Illinois Supreme Court.



A recent decision by the Illinois Supreme Court, known as “Cypress Creek,” will dissuade contractors from pursuing new projects, which in turn will further depress employment and new construction in an already fragile economy.

## **What is the Mechanics Lien Act?**

The Illinois Mechanics Lien Act was established in the 1840s and is a widely accepted method for ensuring that a contractor whose labor and materials improve property obtain fair compensation for his work if he is not paid in a timely fashion. Section 16 of the Act describes how to equitably share limited monetary assets among a lender (a bank) and mechanics lien claimants (contractors, subcontractors, laborers and material suppliers) when the proceeds of the sale of a project are less than all of them are owed.

## **What was the established practice prior to February 25, 2011?**

Since the 1840s the Act fairly provided that lenders were preferred in a foreclosure action to the extent of the value of the land, while the various lien claimants were preferred to the value of the improvements built on the property.

For example, if the land was worth \$1 million, the lenders had preference on this \$1 million; while if the work of the various contractors resulted in an additional \$1 million of value to the property, the mechanics lien claimants were preferred on the value of the \$1 million in improved worth.

## **What did the Illinois Supreme Court decide?**

On February 25, 2011, the Court disregarded and dismissed over 170 years of precedent under Section 16 of the Act and held that lenders have priority in a property foreclosure both on the value of the land and on the value of the improvements erected on the property. Lenders now have two opportunities to siphon off money from the proceeds of a foreclosure sale before any contractors that improved the value of the property may collect under the Act.

## **Why should the legislature enact a law to overturn the Cypress Creek decision?**

Restoring the Mechanics Lien Act to fulfill its original purpose is instrumental to encouraging new construction projects in Illinois. Leaving it “as is” after this decision is likely to dampen any desire for contractors to take the financial risk of building on credit.

## **WHO will BENEFIT from the Cypress Creek decision?**

In the short term, only the banks benefit from this decision. Long term, as construction activity declines, even the banks will eventually be hurt by the decline in building caused by the Cypress Creek decision.

## **WHO will be HURT by the Cypress Creek decision?**

The decision worsens the impact of an already dormant construction industry and will harm working men and women, contractors, subcontractors, union pension and benefit funds, and material suppliers.

The construction business is experiencing an economic depression unlike any in recent memory. Illinois has been hit particularly hard, especially in light of the end of the long and stable residential building boom. All the “related” building that accompanied new home construction has also diminished, including schools, libraries, public service facilities, streets, roads, retail establishments, and other construction. Today, the unemployment of construction employees runs 50% in some trades and many men and women that are working are underemployed and struggling. Making it more difficult for contractors to be compensated will further harm the entire industry.

## **What is the practical effect of this decision?**

When there is not enough money to pay both the lender and the unpaid contractors, the lenders will receive the lion’s share of the funds and very little will be left for the mechanics lien claimants, their employees, or their suppliers. It’s unlikely that contractors will be willing to eagerly step back into the construction arena if their chances of losing even more of their investment have now dramatically increased.

## **Don’t we want lenders to be able to minimize their risk?**

Absolutely. But lenders never lost their ability to make claims against the property. What is objectionable is their added and unjustified ability now to also make claims against the improvements, at the expense of security for contractors. Before this decision, the law recognized that banks and other lenders, not contractors, were in the best position to be able to assess the credit worthiness of developers and to protect themselves with personal guarantees, collateral security, or simply to decide not to extend the loan.

## **Don’t contractors know in advance what they are getting themselves into?**

Unlike banks, contractors do not have the resources to assess credit or to monitor a developer’s ability to pay and are therefore permitted mechanics lien rights to encourage them to provide their labor and material on credit. With those lien rights now seriously undermined, contractors and suppliers are required to take a much higher credit risk. Subcontractors, suppliers and every day laborers are even less able to determine

the credit-worthiness of a project owner whom they typically have never met and know little about, and upon whom they ultimately depend for payment of the work they perform.

### What other means are available to protect contractors from non-payment?

Unlike lenders, contractors have no other recourse to collect for their work if the owner does not pay and the bulk of sale proceeds are taken by the bank. They have no legal right, even were it practical, to remove the installed roof, the drywall, the air conditioning system or the electrical box, and certainly no way to recoup the costs already paid to employees, for materials, insurance, fuel, and multiple suppliers.

### Do lenders have other avenues to collect on their loss?

Absolutely. Lenders by law and by practice can regularly assess the credit worthiness of developers and protect themselves with personal guarantees, collateral security, or simply decide not to extend the loan. In addition, during the course of the project, lenders are in a position to routinely review a developer's payment history and financial status.

### What would be the benefit of the legislature enacting a law restoring the Mechanics Lien Act to its previous status?

Restoring the Act to its historical status will go a long way to restore the incentive to contractors to continue to take risk, build buildings, and put more men and women to work. It can also contribute to reversing the dampening of new construction projects that will inevitably occur under the current decision once suppliers and contractors become unable to secure the credit necessary to complete projects.

### Won't banks be less likely to lend in the future if the Mechanics Lien Act is restored to what it was?

Lenders are in the business of lending and we have seen no lack of lending under the Act that was in place for over 170 years. It is difficult to imagine any plausible scenario in which lenders could legitimately claim they would cease construction lending if the original intent of the Act is restored.

Please support an amendment to Section 16 of the Mechanics Lien Act to restore the original intention of this Act prior to the Cypress Creek decision by the Illinois Supreme Court.

For more information, please contact

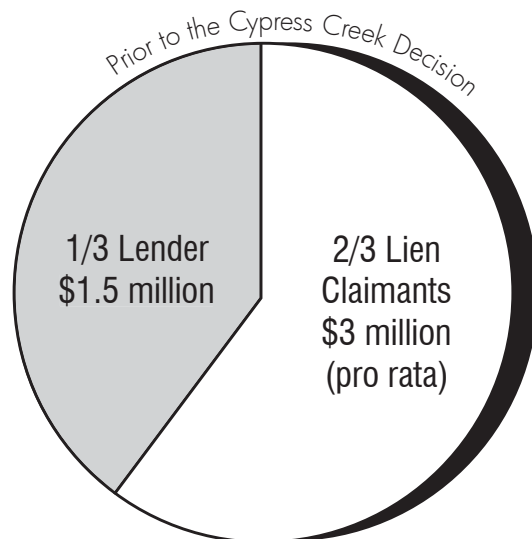
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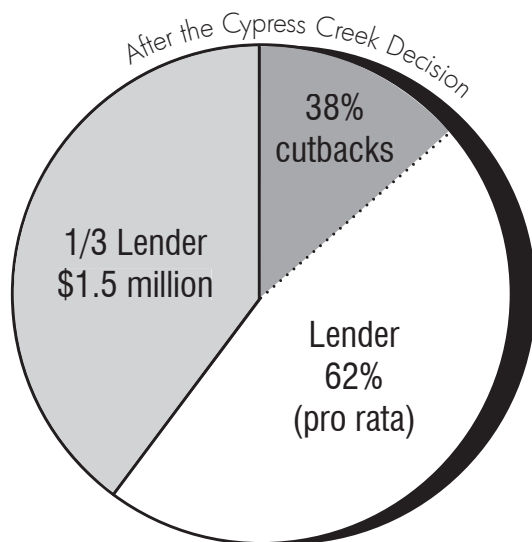
Illinois Mechanical & Specialty Contractors Association (IMSCA),  
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IMSCA is the principal voice of the rights of the subcontracting industry, representing over 2,000 Illinois union construction employers. Comprised of signatory trade associations primarily working in the skilled mechanical fields, IMSCA represented contractors employ tens of thousands of Illinois residents located in every corner of the state, providing stable occupations with fair (union) wages and benefits – and therefore a better standard of living.

# Impact of Cypress Creek on Mechanics Liens



Electrician	owed	\$2.0 million dollars	=	\$1,700,000.00
Plumber	owed	\$1.0 million dollars	=	\$850,000.00
HVAC	owed	\$500,000.00 dollars	=	\$425,000.00
Supplier	owed	\$50,000.00 dollars	=	\$42,500.00
TOTAL		\$3.55 million dollars	=	85%



Electrician	owed	\$2.0 million dollars	=	\$620,000.00
Plumber	owed	\$1.0 million dollars	=	\$310,000.00
HVAC	owed	\$500,000.00 dollars	=	\$155,000.00
Supplier	owed	\$50,000.00 dollars	=	\$15,000.00
Lender	paid	\$6.0 million dollars	=	\$1,860,000.00
TOTAL		\$9.55 million dollars	=	31%