Many, especially contractors and suppliers, felt that the court had shifted priority and subordinated construction liens to construction mortgages without statutory direction and in the face of a statutory grant of priority with respect to the "value of the improvements erected." The Illinois legislature responded, modifying the original language of the statute and adopting additional language that confirmed the intent to grant lien claimants priority with respect to all project improvements, regardless of whether a portion was paid for by the lender. In particular, the statutory revisions added the following language to the Mechanics Lien Act:

> When the proceeds of a sale are insufficient to satisfy the claims of both incumbrancers and lien creditors, the proceeds of the sale shall be distributed as follows: (i) any previous incumbrancers shall have a paramount lien in the portion of the proceeds attributable to the value of the land at the time of making of the contract for improvements; and (ii) any lien creditors shall have a paramount lien in the portion of the proceeds attributable to the value of all subsequent improvements made to the property. [770 Ill. Comp. Stat. 60/16 (2013).]

Under this new language, contractors and others responsible for improving a project will receive the benefit of priority with respect to all improvements to a project, regardless of whether payment was through advances by the construction lender.

The issues confronted by the Illinois legislature in response to the court's interpretation in *Cypress Creek* are not unique but characteristic of the enduring struggle between interests of construction lien claimants and those lending proceeds for construction. Courts and state legislatures throughout the country are faced with similar challenges when providing construction lien rights that are fair to contractors and other project participants whose works improve real estate, without unfairly impacting the lending and investment necessary for project development in the first place. In recent years, the balance of parties' rights has had renewed interest as limited resources and declining property values have emphasized the significance that statutory lien priority can have when a project fails.

Designation of Lien Agent Is Focus of North Carolina Lien Law

North Carolina adopted numerous changes to its lien laws effective in early 2013. These include changes that prevent a general contractor's lien waiver from affecting subcontractor lien rights, requirements for the service of claims for liens on "upstream" parties, and changes to standard lien forms. The most notable change, however, was the adoption of the requirement that owners must designate a "lien agent" for all private projects exceeding $30,000 in total improvements (except for single-family owner-occupied residences). The lien agent must be a title insurance company or title agent selected from the list of registered lien agents maintained by the state's Department of Insurance.

The lien agent must be designated no later than when the owner first contracts with any person to improve the property. Notice by the owner to the project participants of the identity of the lien agent is to be accomplished in a variety of ways depending on the circumstances, but in most cases the lien agent will be identified on the building permit that is required to be posted at the project site. Contractors, in turn, are obligated to provide notice of the identity of the lien agent to lower-tier subcontractors that are not required to furnish labor at the project site and, therefore, would not be able to view the posted building permit. A contractor's failure to provide this notice within three business days of contracting with the lower-tier subcontractor subjects the contractor to liability for damages incurred by that subcontractor by reason of having not received such notice.

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The lien agent's intended role is to maintain a list of parties that provided work or materials for improvement of the project, and thereby protect the owner and the title insurer from liens by unknown parties. Those project participants that wish to preserve their lien rights must serve the lien agent within 15 days after furnishing their first labor or materials for the project with a notice identifying the participant as a potential lien claimant. While a contractor's notice to the lien agent may be a minor procedural hurdle at the beginning of a project, architects may have a more challenging time adapting to the new law, because the architect is typically brought on in the very early stages of project development. There is an exception to notice where the architect starts work before the owner designates the lien agent; however, those architects brought on after a lien agent is already designated but before a building permit is issued will be responsible for inquiring as to the identity of the lien agent and serving notice. Because the architect may have no way of knowing at the time of contracting whether the owner has already designated the lien agent, a formal inquiry may be necessary for all projects.

Failure by a lien claimant to provide notice to the lien agent may result in an outright termination of lien rights or a subordination of the lien to the rights of new owners or lenders upon sale or conveyance of the property.

