

## RÉSUMÉ DIGEST

ACT 325 (HB 203)

2019 Regular Session

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New law, relative to the Private Works Act, generally provides for rights secured by a claim or privilege under the Act, for notice and bond requirements, and for the ranking of privileges.

Existing law (R.S. 9:4801(5)) provides for privileges on immovables to secure the obligations of the owner in favor of registered or certified surveyors or engineers or licensed architects or their professional subconsultants.

New law makes changes in terminology.

Existing law (R.S. 9:4802) provides for claims against the owner and contractor in favor of subcontractors, laborers or employees, sellers of movables, lessors, and prime consultant registered or certified surveyors or engineers or their professional subconsultants. Existing law further provides for the indemnity of the owner by a contractor and for the indemnity of the owner, contractor, or other subcontractor by a subcontractor.

New law provides that a contractor or subcontractor who pays the claims of other claimants is legally subrogated to the claimants' contractual rights but not their claims or privileges under the Private Works Act. New law also makes changes in terminology and other minor semantic changes.

Existing law (R.S. 9:4803) provides for the amounts secured by claims and privileges.

New law makes minor semantic changes, adds a cross-reference to additional limitations governing lessors of movables, and provides that claims and privileges under the Private Works Act do not secure payment of attorney fees or other litigation expenses. New law further provides that when professional consultants or subconsultants are juridical persons, their claims and privileges under the Private Works Act arise in favor of the entity itself rather than its employees.

Existing law sets forth the notices that are required to be provided by professional consultants and subconsultants (R.S. 9:4801(5) and 4802(5)(b)), lessors of movables (R.S. 9:4802(G)), and sellers of movables (R.S. 9:4802(G)). New law (R.S. 9:4804) redesignates existing law and makes changes in terminology. New law further provides for the contents of these notices, the circumstances under which notice must be given, and the effect of failing to properly provide notice. New law imposes notice requirements on subcontractors who do not have a direct relationship with the contractor.

Existing law (R.S. 9:4806) defines the persons who are considered to be owners under the Private Works Act.

New law adds usufructuaries to the definition of owner and also provides that if the owner derives his interest in the immovable from another person, the owner's privilege is inferior and subject to the rights of and obligations owed to that person. New law further provides that the inclusion of the name of an owner who is not responsible for the claim under the Private Works Act does not give rise to liability or a privilege on the owner's interest.

Existing law (R.S. 9:4808) defines what constitutes a work under the Private Works Act.

New law makes express a choice of law rule that was previously implicit under the Private Works Act, removes the requirement of the filing of a bond with the notice of contract, and deletes a prior legislative amendment concerning preliminary site work that was performed by the contractor engaged to construct the building.

New law (R.S. 9:4809) defines the circumstances under which works are substantially completed and abandoned.

New law (R.S. 9:4810) provides for the definitions of terms.

Prior law (R.S. 9:4811(A)(2) and (B)) required the notice of contract to contain the legal property description of the immovable and provided that the improper identification of the immovable constituted prima facie evidence of actual prejudice.

New law requires a complete property description of the immovable and provides that the improper or insufficient description of the immovable constitutes prima facie evidence of actual prejudice.

Prior law (R.S. 9:4811(D)) required a notice of contract to be filed by the contractor in order for him to assert a privilege under existing law (R.S. 9:4801) if the stipulated or estimated price of the work exceeded \$25,000.

New law increases the threshold value of the work to \$100,000, and requires that the notice be filed by the contractor in order for him to assert any privilege under the Private Works Act. New law further provides that if the general contractor is precluded from asserting a privilege pursuant to this provision, he is also prohibited from filing a statement of claim and privilege.

Existing law (R.S. 9:4812(A)) provides that owners shall require general contractors to furnish and maintain a surety bond and imposes the requirement that the surety be solvent.

New law further requires the bond to be issued by a surety company licensed to do business in Louisiana if the stipulated or estimated price of the work exceeds \$100,000.

Prior law (R.S. 9:4812(B)) set forth the amount of the bond required to be furnished based on tiered percentages of the stipulated or estimated price of the work.

New law instead requires that in all cases, the amount of the bond to be at least 100% of the stipulated or estimated price of the work.

Existing law (R.S. 9:4812(E)) sets forth the conditions that are deemed to be included in a bond that complies with these requirements. Prior law provided that a surety who had not consented to extensions of time had the right of indemnification as provided by Civil Code Article 3057.

New law removes the reference to the right of the surety to indemnification under former Civil Code Article 3057 and also makes minor semantic changes.

Existing law (R.S. 9:4813) provides for the extinguishment of the liability of the surety as to all persons who fail to institute actions asserting their claims within one year after the expiration of the time within which they must file their statements of claim or privilege.

New law makes minor semantic changes and further provides that a surety who pays a person to whom he is liable is legally subrogated to the person's contractual rights but not to the person's claims or privileges under the Private Works Act.

Existing law (R.S. 9:4820(A)) provides for the effectiveness of privileges that arise under the Private Works Act. Existing law further provides that in determining when work has begun, the driving of test piling, cutting or removal of trees and debris, placing of fill dirt, demolition of existing structures, or leveling of the land surface shall not be considered.

New law recognizes the existence of exceptions to the general rule and adds the clearing and grading of the land surface to the list provided by existing law. New law also uses defined terms and makes other semantic changes.

Existing law (R.S. 9:4820(B)) provides that if the work is performed on an existing building or other construction, the part of the work performed before a third person's rights become effective shall, for ranking purposes only, be considered a distinct work in certain circumstances.

New law clarifies that this provision applies only in the event that notice of contract was not filed. New law further provides that a privilege other than a laborer's privilege arising prior to the suspension of work will only maintain its ranking if the claimant files a statement of claim or privilege no later than 60 days after the commencement of the suspension.

Prior law (R.S. 9:4820(C)) authorized a person intending to acquire a mortgage, privilege, or other right in an immovable to conclusively rely upon a no-work affidavit as long as the affidavit was filed within four business days of its execution and the mortgage, privilege, or other document was filed before or within four business days of the filing of the affidavit.

New law instead requires the inspection to occur and the no-work affidavit to be filed within four business days before or within four business days after the filing of the mortgage, privilege, or other document. New law also incorporates defined terms, makes semantic changes, and further provides that the facts recited in the affidavit shall be deemed true at the time of the inspection and shall remain true until the mortgage, privilege, or other document is filed.

New law (R.S. 9:4820(D)) provides that the privileges and claims granted to professional consultants and subconsultants shall have no effect as to third persons acquiring rights with respect to the immovable before the statement of claim or privilege is filed.

New law (R.S. 9:4820(E)) provides that in the event that two notices of contract are filed, one of which was properly cancelled, the date of the later filing is the pertinent date for purposes of this provision.

Prior law (R.S. 9:4821(A)) provided for the ranking of mortgages and privileges on immovables, including privileges arising under the Private Works Act.

New law limits the applicability of these ranking rules only to privileges arising under the Private Works Act as to themselves and as to other mortgages and privileges, but not as to other mortgages and privileges among themselves.

New law (R.S. 9:4821(B) and (C)) provides for the ranking of privileges arising under the Private Works Act as to themselves.

New law (R.S. 9:4821(D)) provides that a privilege that encumbers a construction other than a building that would be movable under the Civil Code but is immovable for purposes of the Private Works Act is inferior to a UCC Chapter 9 security interest for which a financing statement was filed and later perfected or that was perfected before the privilege became effective against third persons.

Prior law (R.S. 9:4822(A) through (D)) set forth the time periods required for claimants to file their statements of claim and privilege.

New law (R.S. 9:4822(A) through (C)) provides that if notice of contract is properly filed but no notice of termination is filed, a claimant must file his statement of claim and privilege no later than six months after substantial completion or abandonment of the work. New law provides that if a notice of termination is not filed, a general contractor must file his statement of privilege no later than seven months after substantial completion or abandonment of the work.

New law (R.S. 9:4822(D)) further provides if before expiration of the period provided in new law and at least 10 days before filing his statement of claim or privilege a person granted a privilege under R.S. 9:4801(3) or (4), or a claim and privilege under R.S. 9:4802, in connection with a residential work for which a timely notice of contract was not filed gives notice of nonpayment to the owner, setting forth the amount and nature of the obligation giving rise to the claim and privilege, then the period in which the person is permitted to file his statement of privilege or claim shall expire 70 days after:

- (1) The filing of a notice of termination of the work.
- (2) The substantial completion or abandonment of the work, if a notice of termination is not filed.

Prior law (R.S. 9:4822(E)) set forth the required contents of the notice of termination of the work, including a reasonable identification of the immovable.

New law (R.S. 9:4822(E)) requires the notice of termination to contain a complete property description of the immovable and permits the notice of termination to certify that the contract

with the general contractor has terminated. New law also clarifies that a notice of termination made in good faith is only conclusive for purposes of the Private Works Act.

New law (R.S. 9:4822(F)) permits the general contractor to request that the owner file a notice of termination of the work within 10 days if the work has been abandoned by the owner or substantially completed and to obtain a judgment that has the effect of a notice of termination if the owner fails to do so.

Prior law provided for the filing of a notice of termination or substantial completion with respect to a specified portion or area of work.

New law (R.S. 9:4822(G)) provides for the filing of a notice of termination with respect to a specified area of an immovable and to require the notice of termination to contain a complete property description of the specified area of the immovable.

Existing law sets forth the required contents of a statement of claim or privilege.

New law (R.S. 9:4822(H)) makes semantic changes and also requires the statement of claim or privilege to identify the owner who is liable for the claim or the person who appears of record to own the immovable.

Existing law defines the circumstances under which a work is substantially completed or abandoned. New law (R.S. 9:4809) redesignates existing law.

Prior law (R.S. 9:4822(J)) required a claimant not in privity of contract with a contractor to file a statement of claim or privilege as a prerequisite to filing an action against the contractor and his surety.

New law deletes prior law.

Existing law permits a claimant to give notice to the owner of an obligation owed to him and provides that an owner who has received such a notice shall notify the claimant of the filing of notice of termination of the work or the substantial completion or abandonment of the work.

New law (R.S. 9:4822(H) and (I)) extends the period within which the owner must give notice of the substantial completion or abandonment or of the filing of notice of termination of the work from three days to 10 days. New law further provides that a claimant who fails to file a statement of claim or privilege where an owner has not provided such notice retains his claim but not his privilege.

Existing law (R.S. 9:4823) provides for the extinguishment of claims and privileges.

New law makes minor semantic changes and provides that the claim and privilege against the owner are extinguished if a bond is filed by either a contractor or a subcontractor.

Existing law (R.S. 9:4831) provides for the filing and contents of a notice of contract, notice of termination, statement of claim or privilege, affidavit, or notice of pendency of action.

New law requires a notice of contract, a notice of termination, certain affidavits, and other filings by an owner to contain a complete property description. New law further requires other filings to contain a reasonable identification of the immovable and permits subsequent references to notices of contract that contain complete property descriptions or reasonable identifications of the immovable.

Existing law (R.S. 9:4832) sets forth the circumstances requiring the recorder of mortgages to cancel a notice of contract.

New law requires the recorder of mortgages to cancel a notice of contract if a no-work affidavit is filed within four business days of the filing of a request for cancellation signed by the owner and contractor.

Existing law (R.S. 9:4833) sets forth the circumstances for cancellation of statements of claims and privileges.

New law provides that an owner who is identified in a statement of claim or privilege but who is not liable for the claim may require the person who filed the statement of claim or privilege to request its cancellation. New law further provides that if notice of pendency of action was not timely filed and the effect of recordation of a statement of claim or privilege has ceased, the recorder of mortgages shall cancel the recordation.

Existing law (R.S. 9:4834) provides for the cessation of the effect of a filed notice of contract.

New law makes minor semantic changes and other clarifications.

Existing law (R.S. 9:4835) provides for the filing of a bond or other security and the cancellation of statements of claim or privilege or notices of pendency of action.

New law removes the statement under prior law that the surety shall not have the benefit of division or discussion, which are no longer afforded to the surety under the Civil Code.

Existing law (R.S. 9:4841) sets forth the procedure for the enforcement of claims and privileges.

New law employs proper terminology, clarifies the procedure to be used in concursus proceedings, and makes other semantic changes.

Existing law (R.S. 9:4842) provides for the delivery of a notice or document required to be given under the Private Works Act. New law provides that proof of delivery of movables at the site of the immovable is prima facie evidence that the movables became component parts of, or were used on, the immovable or machinery or equipment.

New law (R.S. 9:4842) retains the general rule under existing law concerning delivery of communications or documents provided by existing law.

New law (R.S. 9:4846) retains existing law concerning proof of delivery of movables at the site of the immovable.

New law (R.S. 9:4843) provides that communications or documents are received when they come into the possession of the intended recipient.

New law (R.S. 9:4844) provides for the delivery of communications or documents by mail or commercial courier and sets forth the addresses that may be used for the intended recipient.

New law (R.S. 9:4845) provides for the delivery of communications or documents by electronic means, such as fax or email.

Prior law (R.S. 9:4852) provided for the required notice given by the contractor to the owner in connection with residential home improvements.

New law amends prior law to clarify its meaning and improve its understandability.

Prior law (C.C. Arts. 2772-2776) provided for privileges in favor of contractors, laborers, and materialmen in connection with contracts between them.

New law repeals prior law.

Prior law provided that vendors, architects, contractors, subcontractors, other laborers, and suppliers of materials, as well as repairers of levees, bridges, ditches, and roads, were entitled to a privilege on immovables.

New law (C.C. Art. 3249) provides that vendors and those who are granted special privileges by legislation have a privilege on immovables.

Existing law (C.C. Arts. 3267 and 3269) provides that vendors, workmen, and furnishers of materials are entitled to privileges on immovables and other privileges and provides with respect to the order of payment and the distribution of loss.

New law replaces "workmen and furnishers of materials" with "creditors having other special privileges".

Prior law (C.C. Art. 3268) provided for the vendor's privilege on land and the workmen's privilege on buildings.

New law repeals prior law.

Prior law (C.C. Art. 3272) provided for the recordation and ranking of privileges of contractors, mechanics, and materialmen.

New law repeals prior law.

Existing law (C.C. Art. 3274) provides for the recordation of privileges and their effectiveness against third persons.

New law recognizes certain exceptions provided by legislation.

Existing law (R.S. 9:4814) prohibits contractors, subcontractors, and their agents from failing to apply payments received in connection with a work as necessary to settle the claims of sellers of movables and laborers. Existing law further provides for the payment of civil penalties, attorney fees, and court costs.

New law redesignates existing law.

Existing law (R.S. 9:4815) provides for the escrow of funds held as retainage by the owner from periodic payments due to the contractor under a contract for \$50,000 or more. Existing law further provides with respect to the requirements of the escrow account, the release of the funds from escrow, and the liability of the escrow agent and qualified financial institution.

New law redesignates existing law.

Existing law (R.S. 9:4822(M)) provides for the furnishing of a retainage bond by the contractor.

New law redesignates existing law.

Effective January 1, 2020, with exceptions as to applicability and retroactivity.

(Amends C.C. Arts. 3249, 3267, 3269, and 3274 and R.S. 9:4801(5), 4802(A)(5), (B), (C), and (F), 4803(A)(1) and (B), 4806, 4807(B), 4808(A), (B), (C), and (D)(1), 4811(A)(2), (B), and (D), 4812(A), (B), and (E)(1) and (2), 4813(D) and (E), 4820, 4821, 4822, 4823(A), (B), (C), (E), and (F), 4831, 4832(A)(intro. para.) and (1) and (B)(intro. para.) and (1), 4833(A), (B), (C), and (E), 4834, 4835(A) and (C), the heading of Subpart F of Part I of Chapter 2 of Code Title XXI of Code Book III of Title 9 of the La.1 Revised Statutes of 1950, 4841(A), (B), (C)(intro. para.) and (3), (D), (E), and (F), 4842, and 4852(A); Adds R.S. 9:4803(C) and (D), 4804, 4809, 4810, 4813(F), 4832(C) and (D), 4843, 4844, 4845, and 4846; Repeals C.C. Arts. 2772 - 2776, 3268, and 3272 and R.S. 9:4802(G) and 4811(E); Redesignates R.S. 9:4814, 4815, and 4822(M))