

2019 Regular Session

HOUSE BILL NO. 203

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PRIVILEGES/LIENS: Provides relative to privileges on immovables

1 AN ACT

2 To amend and reenact Civil Code Articles 3249, 3267, 3269, and 3274 and R.S. 9:4801(5),

3 4802(A)(5), (B), (C), and (F), 4803(A)(1) and (B), 4806, 4807(B), 4808(A), (B), (C),

4 and (D)(1), 4811(A)(2), (B), and (D), 4812(A), (B), and (E)(1) and (2), 4813(E),

5 4820, 4821, 4822, 4823(A), (B), (C), (E), and (F), 4831, 4832(A)(introductory

6 paragraph) and (1) and (B)(introductory paragraph) and (1), 4833(A), (B), (C), and

7 (E), 4834, 4835(A) and (C), the heading of Subpart F of Part I of Chapter 2 of Code

8 Title XXI of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950,

9 4841(A), (B), (C)(introductory paragraph) and (3), (D), (E), and (F), 4842, and

10 4852(A), to enact R.S. 9:4803(C) and (D), 4804, 4809, 4810, 4813(F), 4832(C) and

11 (D), 4843, 4844, 4845, and 4846, and to repeal Civil Code Articles 2772, 2773,

12 2774, 2775, 2776, 3268, and 3272 and R.S. 9:4802(G) and 4811(E), and to

13 redesignate R.S. 9:4814, 4815, and 4822(M), relative to privileges on immovables;

14 to provide for claims against owners and contractors; to provide for the amounts

15 secured by claims and privileges; to provide for notice and requests for statements

16 of amounts owed; to provide definitions of terms; to provide for the filing of a notice

17 of contract; to provide for the furnishing and maintenance of bonds; to provide for

18 the liability of sureties; to provide for the effectiveness and ranking of privileges; to

19 provide for the preservation and extinguishment of claims and privileges; to provide

20 for the filing of notice of contract and termination, statement of claim or privilege,

1 affidavits, and notice of pendency of action; to provide for cancellation and
2 effectiveness of notice of contract and cancellation of statements of claims and
3 privileges; to provide for the enforcement of claims and privileges; to provide for
4 delivery and receipt of communications and other documents; to provide for proof
5 of delivery of movables; to provide for notice for residential home improvements;
6 to provide for redesignations; to provide for effectiveness and applicability; and to
7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:4801(5), 4802(A)(5), (B), (C), and (F), 4803(A)(1) and (B), 4806,
10 4807(B), 4808(A), (B), (C), and (D)(1), 4811(A)(2), (B), and (D), 4812(A), (B), and (E)(1)
11 and (2), 4813(E), 4820, 4821, 4822, 4823(A), (B), (C), (E), and (F), 4831,
12 4832(A)(introductory paragraph) and (1) and (B)(introductory paragraph) and (1), 4833(A),
13 (B), (C), and (E), 4834, 4835(A) and (C), the heading of Subpart F of Part I of Chapter 2 of
14 Code Title XXI of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950,
15 4841(A), (B), (C)(introductory paragraph) and (3), (D), (E), and (F), 4842, and 4852(A) are
16 hereby amended and reenacted, and R.S. 9:4803(C) and (D), 4804, 4809, 4810, 4813(F),
17 4832(C) and (D), 4843, 4844, 4845, and 4846 are hereby enacted to read as follows:

18 §4801. Improvement of immovable by owner; privileges securing the improvement

19 The following persons have a privilege on an immovable to secure the
20 following obligations of the owner arising out of a work on the immovable:

21 * * *

22 (5) ~~Registered or certified surveyors or engineers, or licensed architects, or~~
23 ~~their~~ Professional consultants engaged by the owner, and the professional
24 subconsultants of those professional consultants, ~~employed by the owner,~~ for the
25 price of professional services rendered in connection with a work that is undertaken
26 by the owner. ~~A "professional subconsultant" means a registered or certified~~
27 ~~surveyor or engineer or licensed architect employed by the prime professional, as~~
28 ~~described in this Paragraph. In order for the privilege of the professional~~
29 ~~subconsultant to arise, the subconsultant must give notice to the owner within thirty~~

1 ~~days after the date that the subconsultant enters into a written contract of~~
2 ~~employment. The notice shall include the name and address of the subconsultant,~~
3 ~~the name and address of his employer, and the general nature of the work to be~~
4 ~~performed by the subconsultant.~~

Comments - 2019

6 (a) This Section establishes privileges securing the owner's contractual
7 obligations to the persons named for amounts arising out of work done for the owner.
8 The 2019 revision of the Private Works Act makes no substantive change in the
9 categories of persons who are granted privileges under this Section. In each case, the
10 obligations secured must arise out of a work and must be of the nature described with
11 respect to each claimant.

12 (b) Except in the case of professional subconsultants of professional
13 consultants engaged by the owner, this Section presupposes a direct contractual
14 relationship between the privilege holder and the owner. The reason that the
15 privileges in favor of those professional subconsultants are provided in this Section,
16 rather than in R.S. 9:4802, is that their work does not emanate from a contract
17 between the owner and a contractor.

18 (c) Privileges arising under this Section, as well as those securing a claim
19 granted by R.S. 9:4802, encumber the interest in an immovable enjoyed by the owner
20 whose obligation is secured by the privilege. R.S. 9:4806(C). The 2019 revision
21 expands the definition of the term "immovable" for purposes of the Private Works
22 Act to include not only land and buildings but also other constructions that are
23 permanently attached to the ground, even those that are classified as movables under
24 the Civil Code because they belong to someone other than the owner of the ground.
25 See R.S. 9:4810.

26 (d) Paragraph (1) must be read in conjunction with R.S. 9:4811(D), which
27 in certain cases denies any privilege under the Private Works Act to a general
28 contractor who does not cause notice of his contract to be properly and timely filed.

29 (e) Paragraph (2) contemplates that the obligations secured must be for the
30 price of labor or services of a laborer or other employee. A contractor who renders
31 personal services in the course of performing his contract is not included in this
32 category. The owner is not liable to the contractor for those services but instead is
33 liable to him only for the price of his contract. This distinction is significant,
34 primarily because of the priority given to the privileges of laborers and other
35 employees by R.S. 9:4821.

36 (f) Paragraph (3) recognizes the distinction articulated in the jurisprudence
37 between a contract of sale and a contract for the performance of work. See *Leonard*
38 *B. Hebert, Jr. & Co. v. Kinler*, 336 So. 2d 922 (La. App. 4th Cir. 1976); *Heard v.*
39 *Southwest Steel Products*, 124 So. 2d 211 (La. App. 2d Cir. 1960); *Thurman v. Star*
40 *Elec. Supply, Inc.*, 307 So. 2d 283 (La. 1975) (citing *Heard* in interpreting the Public
41 Works Act); *Wilson Industries, Inc. v. Aviva America, Inc.*, 185 F.3d 492 (5th Cir.
42 1999) (citing R.S. 9:4801 and *Hebert, Thurman, and Heard* in applying these
43 principles to the Louisiana Oil Well Lien Act); and *Stainless Piping Materials, Inc.*
44 *v. Shell Oil Co.*, 1987 WL 5612 (E.D. La. 1987). See also *Tooley-Knoblett and*
45 *Gruning*, 24 La. Civ. L. Treatise, Sales §1:10 (2012). Although the person dealing
46 with the owner is given a privilege by this Section whether he is a contractor or a
47 seller, the distinction is nevertheless relevant in determining the rights and
48 obligations of that person under the Act. The distinction is also important in that a

1 seller to a contractor is given rights under R.S. 9:4802 but a seller to another seller
2 is not.

3 (g) For a privilege to exist under the Private Works Act in favor of a seller,
4 the things sold must be physically incorporated into the immovable or consumed in
5 the work. See *Nu-Lite Elec. Wholesalers v. Colonial Elec.*, 527 So. 2d 498 (La. App.
6 5th Cir. 1988); *H.G. Angle Co. v. Talmadge*, 410 So. 2d 1151 (La. App. 3d Cir.
7 1981); *Century National Bank v. Parent*, 341 So. 2d 1371 (La. App. 4th Cir. 1977);
8 and *Tri-South Mortg. Investors v. Forest & Waterway Corp.*, 354 So. 2d 588 (La.
9 App. 4th Cir. 1977). R.S. 9:4846 creates a rebuttable presumption that movables that
10 the seller delivers to the site of the immovable become component parts of the
11 immovable or are consumed in the work. Incorporation of the thing sold into the
12 immovable not only gives rise to a privilege under the Act but also effectively
13 extinguishes the vendor's privilege to which the seller would otherwise be entitled
14 under the Civil Code. See *American Creosote Company v. Springer*, 241 So. 2d 510
15 (La. 1970); *Hyman v. Ross*, 643 So. 2d 256 (La. App. 2d Cir. 1994).

16 (h) Under Paragraph (3), electricity and other sources of energy are
17 movables. See A.N. Yiannopoulos, 2 La. Civ. L. Treatise, Property §7:46 (5th ed.)
18 (stating that "energies are things in Louisiana, protected by the laws applicable to
19 movable property"). See also *Sommers v. Secretary, Dept. of Revenue and Taxation*,
20 593 So. 2d 689 (La. App. 1st Cir. 1991) (citing Comment (b) to Civil Code Article
21 461 and determining that "electricity can be moved from one place to another and,
22 as such, is by definition a movable.")

23 (i) The terms "professional consultant" and "professional subconsultant" are
24 defined in R.S. 9:4810. The privileges provided under Paragraph (5) exist in their
25 favor only if the services that they perform relate to a work on the immovable. See
26 *Construction Eng. Co. of La. v. Village Shop Ctr.*, 168 So. 2d 826 (La. App. 2d Cir.
27 1964). Several provisions of the Private Works Act treat the privileges established
28 under Paragraph (5) and under R.S. 9:4802(A)(5) differently from those accorded to
29 other claimants. See, e.g., R.S. 9:4804(A), 4820(D), and 4821(B)(3).

30 (j) The Comments that accompanied the 1981 revision of the Private Works
31 Act, which are superseded by the 2019 Revision Comments, appear in Acts 1981,
32 No. 724.

33 §4802. Improvement of immovable by contractor; claims against the owner and
34 contractor; privileges securing the improvement

35 A. The following persons have a claim against the owner and a claim against
36 the contractor to secure payment of the following obligations arising out of the
37 performance of work under the contract:

38 * * *

39 (5) ~~Prime consultant registered or certified surveyors or engineers, or~~
40 ~~licensed architects, or their professional subconsultants, employed~~ Professional
41 consultants engaged by the contractor or a subcontractor, and the professional
42 subconsultants of those professional consultants, for the price of professional

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 services rendered in connection with a work that is undertaken by the contractor or
2 subcontractor.

3 (a) ~~A "professional subconsultant" means a registered or certified surveyor~~
4 ~~or engineer, or licensed architect employed by the prime consultant.~~

5 (b) ~~For the privilege under this Subsection to arise, a prime consultant or~~
6 ~~professional subconsultant shall give written notice to the owner within thirty~~
7 ~~working days after the date that the prime consultant or professional subconsultant~~
8 ~~is employed. The notice shall include the name and address of the prime consultant~~
9 ~~or professional subconsultant, the name and address of his employer, and the general~~
10 ~~nature of the work to be performed by the prime consultant or professional~~
11 ~~subconsultant.~~

12 B. The claims against the owner under this Section shall be secured by a
13 privilege on the immovable on which the work is performed.

14 C. The owner is relieved of the claims against him under this Section and the
15 privileges securing them when the claims arise from the performance of a contract
16 by a general contractor for whom a bond is given and maintained as required by R.S.
17 9:4812 and when notice of the contract with the bond attached is properly and timely
18 filed as required by R.S. 9:4811.

19 * * *

20 F. A contractor shall indemnify the owner for claims against the owner
21 arising from the work to be performed under the contract. A subcontractor shall
22 indemnify the owner, the contractor, and any subcontractor from or through whom
23 his rights are derived, for amounts paid by them for claims under this ~~part~~ Part
24 arising from work performed by the subcontractor. A contractor who pays the claims
25 of other claimants arising from work performed under the contractor's contract is
26 legally subrogated to their contractual rights but may not assert by subrogation their
27 claims against the owner arising under this Section or the privileges securing them.
28 A subcontractor who pays the claims of other claimants arising from work performed
29 on behalf of the subcontractor is legally subrogated to their contractual rights but

1 may not assert by subrogation their claims against the owner or contractor arising
2 under this Section or the privileges securing them.

3 Comments - 2019

4 (a) This Section establishes claims and privileges in favor of persons who
5 have a contractual relationship with a contractor or subcontractor but no direct
6 contractual relationship with the owner. The 2019 revision makes no substantive
7 change in the categories of persons who are granted privileges by this Section.

8 (b) Those claimants who are granted a claim against the owner under this
9 Section have personal recourse against the owner as well as a privilege upon the
10 owner's interest in the immovable as security for that claim. These claimants are also
11 granted a personal claim against the contractor, even where they are not in direct
12 privity of contract with the contractor. The personal liability imposed upon the
13 owner and that imposed upon the contractor are distinct and may be separately
14 extinguished. See R.S. 9:4823. The liability that this Section imposes upon the
15 contractor exists not only in favor of those claimants who deal with subcontractors
16 but also in favor of those who are in direct privity of contract with the contractor.
17 While the extinguishment of the statutory liability of the contractor in the latter case
18 will not relieve the contractor or his surety of their contractual liabilities, it may
19 affect the priority of the claim against the surety vis-a-vis other claimants who
20 preserve their statutory claims against the contractor. See R.S. 9:4813(B).

21 (c) Although the personal liability imposed upon the owner and upon the
22 contractor by this Section is not that of a surety, the claims against them arising
23 under this Section are nonetheless a kind of personal security and are accessory to
24 the primary contractual obligations owed to the claimants. See Civil Code Articles
25 3136 through 3138. Thus, extinguishment of the primary contractual obligation
26 extinguishes the statutory liability under this Section. See R.S. 9:4823(A)(3).

27 (d) Each privilege granted by Subsection B is security for the corresponding
28 claim against the owner arising under Subsection A and is thus extinguished when
29 the claim is extinguished. See Civil Code Article 3277(3). The converse is not
30 necessarily true and, based on certain former provisions of the Private Works Act
31 providing for the loss of the privilege without also providing for the simultaneous
32 loss of the underlying claim, courts have held that a personal claim against an owner
33 can exist under this Section even where the privilege has been lost. See *Hawk Field*
34 *Services, L.L.C. v. Mid America Underground, L.L.C.*, 94 So. 3d 136 (La. App. 2d
35 Cir. 2012); *Standard Materials, L.L.C. v. C & C Builders, Inc.*, 2010 WL 5479903
36 (La. App. 1st Cir. 2010). The 2019 revision is intended to reduce the circumstances
37 under which this could occur, so that the claim and privilege securing it will almost
38 always be co-terminous. See, e.g., R.S. 9:4804 (requiring certain claimants to give
39 notices in order to be entitled to either a claim or a privilege); R.S. 9:4805(A)
40 (providing for extinguishment of a claimant's claim and privilege to the extent of
41 damages suffered when the claimant fails to provide information requested under
42 that Section); R.S. 9:4822 (specifying the action required to preserve claims and
43 privileges); and R.S. 9:4823 (providing for the simultaneous extinguishment of a
44 claim and the privilege securing it). Nevertheless, the revision specifically provides,
45 in limited circumstances, for the continued existence of the personal claim against
46 the owner even though the privilege securing the claim is lost by the claimant's
47 failure to file a timely statement of claim or privilege. See R.S. 9:4822(H) and (I).
48 Similarly, where the owner posts a release bond pursuant to R.S. 9:4835, the
49 privilege is extinguished, but the claim against the owner continues. R.S. 9:4823(D).
50 The revision also provides that a statement of claim or privilege identifying an
51 immovable by reference to a notice of contract that itself does not contain a
52 reasonable identification of the immovable is insufficient to preserve the claimant's

1 privilege against third persons but is nevertheless sufficient to preserve the claimant's
2 rights against the owner, the contractor, and the surety. See R.S. 9:4831(D).

3
4 (e) Subsection C allows the owner to avoid the claims arising under this
5 Section and the privileges securing them by requiring the contractor to provide a
6 payment bond in accordance with R.S. 9:4812 and by filing a timely notice of
7 contract, with the bond attached, as provided in R.S. 9:4811(A). The filing of notice
8 of contract and bond will not, however, avoid the general contractor's privilege under
9 R.S. 9:4801(1) for the price of the contract or any other privileges arising under R.S.
10 9:4801. The filing of notice of contract and bond also does not eliminate claims
11 against the contractor arising under Subsection A.

12 (f) Subsections D and E make clear that the liability of the owner, contractor,
13 and surety are distinct from and supplemental to any contractual obligations that may
14 exist. Although each may be liable to the claimant who takes steps to preserve his
15 rights under the Private Works Act, those liabilities are not expressed as being
16 solidary. It is not intended that the technical rules regulating the obligations of
17 solidary obligors prescribed by Civil Code Articles 1794 et seq. apply to such
18 relationships.

19 (g) Subsection F ensures that responsibility for the obligations giving rise to
20 the claims and privileges arising under the Private Works Act is ultimately imposed
21 upon the person who is in the first instance contractually bound for it. If there is a
22 surety bond, R.S. 9:4812(C)(1) also makes the surety liable to the owner who is
23 required to pay a claim under this Section. The surety who so pays will, under the
24 general rules of suretyship, be subrogated to the owner's rights of indemnity. See
25 Civil Code Article 3048. A surety who pays a claimant is also legally subrogated to
26 the claimant's contractual rights but not to the claimant's claim and privilege under
27 the Act. See R.S. 9:4813(F).

28 (h) The last two sentences of Subsection F are new and are intended to
29 clarify the circumstances under which subrogation operates in favor of, or can be
30 asserted by, a contractor or subcontractor who discharges an obligation owed to a
31 person holding a claim arising under this Section. Under general rules of
32 subrogation, a person who pays an obligation as to which he is the principal obligor
33 cannot assert subrogation. See Civil Code Article 1829, Comment (d). Thus, as the
34 Supreme Court held in *Pringle-Associated Mortgage Corp. v. Eanes*, 226 So. 2d 502
35 (La. 1969), a general contractor is not entitled to assert by subrogation the laborer's
36 privileges of his own employees. The addition of the last two sentences to
37 Subsection F is intended to repudiate dicta to the contrary in *Tee It Up Golf, Inc. v.*
38 *Bayou State Construction, LLC*, 30 So. 3d 1159 (La. App. 3d Cir. 2010) (suggesting
39 that, even where R.S. 9:4811(D) deprives a general contractor of a privilege when
40 he fails to file notice of his contract, the general contractor can still assert the
41 privileged claims of his own employees who performed work). By contrast, a
42 contractor who pays a subcontractor's employee is legally subrogated under
43 Subsection F to the employee's contractual claim against the subcontractor/employer
44 but cannot assert subrogation (whether legal or conventional) to the employee's claim
45 against the owner or the privilege arising under this Section. Permitting the
46 contractor to assert subrogation to the rights of a person holding a claim arising
47 under this Section or to the privilege securing the claim would frustrate the
48 indemnity that the contractor owes to the owner against the claim under the first
49 sentence of Subsection F and could provide a mechanism for manipulation of the
50 ranking rules under R.S. 9:4821.

51 (i) The substance of former Subsection G has been moved, with substantial
52 modification, to R.S. 9:4804.

1 §4803. Amounts secured by claims and privileges

2 A. The privileges granted by R.S. 9:4801 and the claims granted by R.S.
3 9:4802 secure payment of:

4 (1) The principal amounts of the obligations described in R.S. 9:4801 and
5 ~~R.S. 9:4802(A)~~, interest due thereon, and fees paid for filing the statement required
6 by R.S. 9:4822.

7 * * *

8 B. The Subject to the additional limitations of amount contained in R.S.
9 9:4804(B), the claim or privilege granted the lessor of a movable by R.S. 9:4801(4)
10 or ~~R.S. 9:4802(A)(4)~~ is limited to and secures only that part of the ~~rentals~~ rents
11 accruing during the time the movable is located at the site of the immovable for use
12 in a work. A movable shall be deemed not located at the site of the immovable for
13 use in a work after the occurrence of any of the following:

14 (1) The work is substantially completed or abandoned;~~or,~~

15 (2) A notice of termination of the work is filed;~~or,~~

16 (3) The lessee has abandoned the movable, or use of the movable in a work
17 is completed or no longer necessary, and the owner or contractor gives written notice
18 to the lessor of abandonment or completion of use.

19 C. The privileges granted by R.S. 9:4801 and the claims and privileges
20 granted by R.S. 9:4802 do not secure payment of attorney fees or other expenses of
21 litigation.

22 D. When a professional consultant or professional subconsultant is a juridical
23 person, claims and privileges under this Part arise in favor of that juridical person for
24 amounts owed to it under this Section, and no claim or privilege arises under this
25 Part in favor of any surveyor, engineer, architect, or other person that it employs.

26 Comments - 2019

27 (a) Subsections A and B, which specify the amounts that are secured by the
28 claims and privileges arising under R.S. 9:4801 and 4802, are unchanged by the 2019
29 revision, except that Subsection B includes a cross-reference to limitations contained
30 in R.S. 9:4804(B) on the amount of the claim and privilege afforded to the lessor of
31 a movable.

1 (b) Subsection C is new. It clarifies that the claims and privileges arising
2 under R.S. 9:4801 and 4802 do not secure attorney fees that may be owed to the
3 claimant, whether arising by contract or by law. See *Accusess Environmental, Inc.*
4 *v. Walker*, 185 So. 3d 69 (La. App. 1st Cir. 2015). Nevertheless, several provisions
5 of the Private Works Act allow recovery of attorney fees under specific
6 circumstances. See, e.g., R.S. 9:4833(B) and (C), 4841(F), and 4856.

7 (c) Subsection D is new. It makes express a proposition that was implicit
8 under the Private Works Act prior to its 2019 revision. Claims and privileges arising
9 under R.S. 9:4801 and 4802 in favor of a professional consultant or subconsultant
10 that is a juridical person belong to that juridical person rather than to the individual
11 professionals that it employs. Nevertheless, if an individual is not an employee of
12 a professional consultant but is instead a professional surveyor, professional
13 engineer, or licensed architect engaged as an independent contractor by the
14 professional consultant, the individual will qualify as a professional subconsultant
15 under the definition of that term in R.S. 9:4810 and, according to the circumstances,
16 may be entitled to a claim or privilege in his own right.

17 §4804. Notices required of certain claimants

18 A. To be entitled to a claim arising under R.S. 9:4801(5) or a claim under
19 R.S. 9:4802(A)(5) and the privilege securing the claim, professional consultants and
20 their professional subconsultants shall deliver written notice to the owner within
21 thirty days after the date of being engaged in connection with the work. The notice
22 shall include the name and address of the claimant, the name and address of the
23 person who engaged the claimant, and the general nature of the work to be
24 performed by the claimant. No notice is required under this Subsection by a person
25 who is directly engaged by the owner.

26 B.(1) To be entitled to a claim arising under R.S. 9:4802(A)(4) and the
27 privilege securing the claim, the lessor of movables shall deliver to the contractor,
28 and also to the owner if notice of contract has been timely filed, a notice that the
29 lessor has leased or intends to lease movables to a contractor or subcontractor for use
30 in the work. The notice shall include the name and address of the lessor, the name
31 and address of the lessee, and a general description of the movables. If the notice is
32 delivered more than thirty days after movables leased by the lessor are first placed
33 at the site of the immovable, the claim and privilege of the lessor shall be limited to
34 rents accruing after the notice is given. No notice is required to be delivered under
35 this Paragraph to a person who is a party to the lease.

1 (2) Within fifteen days after receipt of a request from the owner or
2 contractor, the lessor having a claim and privilege under R.S. 9:4802(A)(4) shall
3 provide the person making the request with a description sufficient to identify all
4 movables that have been placed at the site of the immovable for use in the work. The
5 lessor's response need not identify movables which are no longer located at the site
6 and for which no amounts are owed to the lessor. A lessor's failure to give a timely
7 and accurate response to a request made under this Paragraph shall extinguish the
8 lessor's claim and privilege under R.S. 9:4802(A)(4) to the extent of any damages
9 suffered by the person making the request as a result of the failure or inaccuracy.

10 C. If notice of contract has been timely filed, the seller of a movable sold to
11 a subcontractor shall deliver to the owner and contractor notice of nonpayment of the
12 price of the movable no later than seventy-five days after the last day of the calendar
13 month in which the movable was delivered to the subcontractor. The notice shall
14 include the name and address of the seller, the name and address of the
15 subcontractor, a description of the movable, and a statement of the unpaid balance
16 of the price owed to the seller for the movable. A seller who does not deliver to both
17 the owner and contractor notice of nonpayment of the price of a movable when
18 required to do so under this Subsection shall not be entitled to a claim or privilege
19 under this Part for the price of the movable.

Comments - 2019

21 (a) This Section is new. It gathers together and somewhat modifies notice
22 requirements that were formerly found in scattered provisions of the Private Works
23 Act. In the case of some claimants, a notice must be given in order for a claim or
24 privilege to arise in the first instance. In the case of other claimants, a claim or
25 privilege is extinguished, in whole or in part, if a timely notice is not given. A notice
26 required under this Section must be given by one of the methods authorized in R.S.
27 9:4842 through 4845; it is not required to be filed in the public records, and a filing
28 in the public records will not satisfy the requirement of notice.

29 (b) Subsection A carries forward, without substantive change, notice
30 requirements that were formerly imposed on professional consultants and
31 subconsultants under R.S. 9:4801(5) and 4802(A)(5), except that no notice is
32 required to be given to an owner by a professional consultant who has a direct
33 contractual relationship with the owner.

34 (c) Subsection B substantially relaxes the rather onerous notice requirements
35 previously imposed upon lessors of movables used at the site of an immovable.
36 Under former R.S. 9:4802(G)(1), a lessor was required to give notice, signed by both

1 the lessor and lessee, to the owner and contractor within ten days after the lessor's
 2 movables were first placed at the site. A failure to give notice within that ten-day
 3 period eliminated any privilege in the lessor's favor under either R.S. 9:4801(4) or
 4 4802(A)(4), not only for rent owed with respect to the movables that were initially
 5 placed at the site but also for rent owed for any other leased movables that were later
 6 used in the course of the work. See *Hawk Field Servs., L.L.C. v. Mid Am.*
 7 *Underground, L.L.C.*, 94 So. 3d 136 (La. App. 2d Cir. 2012), writ denied, 99 So. 3d
 8 652 (La. 2012). This rule applied even when the owner was a party to the lease.
 9 Under Paragraph (B)(1) of this Section, a lessor is required to give notice to the
 10 owner and the contractor (if the contractor is not a party to the lease) in order to be
 11 entitled to a claim and privilege under R.S. 9:4802(A)(4), but there is no rigid
 12 deadline within which the lessor must do so. If, however, the notice is given more
 13 than twenty days after the lessor's movables are first placed at the site, the claim and
 14 privilege of the lessor is limited to rents accruing after the notice is given. No notice
 15 is required to be given to a person who is a party to the lease and who should
 16 therefore already be aware of its existence. The lessor's notice must include a
 17 general description of the leased movables but need not state the terms of the lease
 18 or identify the leased movables with specificity. For an owner or contractor who
 19 desires more specific information, Paragraph (B)(2) introduces a mechanism by
 20 which an owner or contractor can obtain a specific description of all leased movables
 21 which remain at the site or for which rents remain owing.

22 (d) Subsection C applies only to sellers who supply movables to a
 23 subcontractor on a work for which notice of contract has been timely filed. It
 24 restates, in more precise terms, a requirement formerly contained in R.S.
 25 9:4802(G)(3). As under prior law, an unpaid seller of a movable sold to a
 26 subcontractor must deliver to the owner and contractor notice of nonpayment no later
 27 than seventy-five days after the last day of the calendar month in which the movable
 28 was delivered to the subcontractor. See *AP Interiors, LLC v. Coryell Cty.*
 29 *Tradesmen, LLC*, 239 So. 3d 393 (La. App. 4th Cir. 2018). See also *J. Reed*
 30 *Constructors, Inc. v. Roofing Supply Group, L.L.C.*, 135 So. 3d 752 (La. App. 1st
 31 Cir. 2013) (placing this interpretation on the corresponding provision of the Public
 32 Works Act, R.S. 38:2242(F)). Subsection C clarifies that a failure to send a timely
 33 notice causes not only a loss of the seller's privilege but also the extinguishment of
 34 his personal claim against the owner and contractor under R.S. 9:4802(A).

35 (e) R.S. 9:4805 establishes a means by which owners and contractors can
 36 obtain a statement of amounts owed to lessors and sellers who are entitled to a claim
 37 and privilege under R.S. 9:4802.

38 (f) The requirement of former R.S. 9:4802(G)(2) that an unpaid seller of
 39 movables sold for use in a residential work deliver notice of nonpayment to the
 40 owner at least ten days before filing a statement of his claim or privilege has been
 41 suppressed.

42 (g) Where a timely notice of contract has been filed and includes the owner's
 43 address, a claimant who wishes to preserve a claim and privilege granted to him
 44 under R.S. 9:4802 must deliver a copy of his statement of claim or privilege to the
 45 owner within the same time required for its filing in the mortgage records. See R.S.
 46 9:4822(B).

47 SUBPART B. DEFINITIONS

48 §4806. Owner defined; interest affected

49 A. An owner, co-owner, naked owner, ~~owner~~ usufructuary, other holder of
 50 a predial or personal servitude, possessor, lessee, or other person owning or having

1 the right to ~~the use or enjoyment of~~ enjoy an immovable or having an interest therein
2 shall be deemed to be an owner under this Part.

3 B. The claims against an owner granted by R.S. 9:4802 are limited to the
4 owner or owners who have contracted with the contractor ~~or to the~~ and to any owner
5 or owners who have agreed in writing to the price and work of the contract ~~of a~~
6 ~~lessee, wherein such owner or owners have specifically~~ made by another owner and
7 have expressly agreed in writing to be liable for any claims granted by ~~the provisions~~
8 ~~of R.S. 9:4802. If more than one owner has contracted~~ or expressly agreed in writing
9 to be liable, each shall be solidarily liable for the claims.

10 C. ~~The~~ A privilege granted by R.S. 9:4801 ~~and~~ or 4802 affects only the
11 interest in or on the immovable enjoyed by the owner whose obligation is secured
12 by the privilege. If that owner is a lessee or holder of a servitude or otherwise
13 derives his interest in or on the immovable from another person, the privilege is
14 inferior and subject to all rights of, and obligations owed to, that person.

15 D. The ~~privilege~~ privileges granted by this Part upon a lessee's rights in the
16 lease or buildings ~~and structures~~ and other constructions shall be inferior and subject
17 to all of the rights of, or obligations owed to, the lessor, including the right of the
18 lessor to resolve ~~dissolve~~ the lease for nonperformance of ~~its~~ the lessee's obligations,
19 and to execute upon the lessee's rights and ~~to~~ sell them in satisfaction of the
20 obligations free of the ~~privilege~~ privileges under this Part. If a sale of the lease is
21 made in execution of the claims of the lessor, the ~~privilege attaches~~ privileges under
22 this Part attach to that portion of the sale proceeds remaining after satisfaction of the
23 claims of the lessor.

24 E. The inclusion in a statement of claim and privilege of the name of an
25 owner who is not responsible for the claim under Subsection B of this Section shall
26 not give rise to liability on the part of that owner or create a privilege upon that
27 owner's interest in the immovable.

28 Comments - 2019
29

30 (a) Under Subsection A, the definition of an owner for purposes of the
31 Private Works Act is much broader than the meaning ordinarily given to that term.

1 Anyone having the right to the use or enjoyment of an immovable can be an "owner"
 2 under the Act, even if his interest is not ownership and even if, as in the case of a
 3 lessee, he does not hold a real right in the immovable. Subsection B follows the
 4 longstanding rule that R.S. 9:4802 gives rise to claims against only the owner who
 5 contracted the work with the contractor and to other owners who agreed in writing
 6 to the price and work of the contract and have expressly agreed in writing to be liable
 7 for those claims. Mere consent by one owner to the performance of work contracted
 8 by another, or knowledge that such work is in progress, is insufficient to impose
 9 liability upon the owner who consents to or knows of the work. *Fruge v. Muffoletto*,
 10 137 So. 2d 336, 341 (La. 1962); *Louisiana Industries v. Bogator, Inc.*, 605 So. 2d
 11 213 (La. App. 2d Cir. 1992); and *Clegg Concrete, Inc. v. Bonfanti-Fackrell, Ltd.*, 532
 12 So. 2d 465, 469 (La. App. 1st Cir. 1988).

13 (b) Subsection C continues the rule that privileges established by the Act
 14 encumber only the interest in the immovable enjoyed by the owner whose obligation
 15 is secured by the privilege. The last sentence of Subsection C makes more general
 16 a principle that the text of the Private Works Act had formerly applied only to
 17 lessees: Where the responsible owner is a lessee or holder of a servitude deriving his
 18 rights from another person, privileges arising under the Private Works Act are
 19 inferior and subject to all rights of that person.

20 (c) Subsection D, which represents a specific application to leases of the
 21 general principle stated in Subsection C, recognizes that privileges arising under the
 22 Private Works Act encumber not only the lessee's interest in the lease but also the
 23 lessee's interest in buildings and other constructions. Buildings owned by a lessee
 24 are classified under property law as immovable, but other constructions owned by
 25 a lessee are movable. See Civil Code Article 464, Comment (d). Nevertheless, those
 26 other constructions are to be treated as immovables for purposes of the Private
 27 Works Act, and privileges arising under the Act against a lessee encumber them. See
 28 R.S. 9:4810(4).

29 (d) Jurisprudence has held that the fact that a lease is unrecorded does not
 30 alter the rules of this Section or make the lessor responsible for claims arising out of
 31 a work contracted by the lessee. *Cajun Constructors, Inc. v. EcoProduct Solutions,*
 32 *LP*, 182 So. 3d 149 (La. App. 1st Cir. 2015).

33 (e) Subsection E states the self-evident proposition that the mere inclusion
 34 in a statement of claim or privilege of the name of an owner who is not responsible
 35 for the claim does not impose liability for the claim upon that owner or create a
 36 privilege upon his interest in the immovable. An owner who has no responsibility
 37 under the Act might be named inappropriately in a statement of claim or privilege
 38 on account of a mistake of law or fact or through a conscious desire on the part of the
 39 claimant to err on the side of caution by including the names of anyone who could
 40 possibly have liability as an owner. In those instances, the improperly named owner
 41 is given the remedy of requesting, and ultimately requiring, a cancellation of the
 42 statement of claim or privilege insofar as it affects his interest in the immovable. See
 43 R.S. 9:4833(A)(2). There is one circumstance, however, in which the Private Works
 44 Act, as amended by the 2019 revision, specifically permits an owner who has no
 45 liability to be named in a statement of claim or privilege: Where the responsible
 46 owner's interest in the immovable does not appear of record, the statement of claim
 47 or privilege may instead identify the person who appears of record to own the
 48 immovable. See R.S. 9:4822(G)(5). As Subsection E provides, this identification
 49 does not create a privilege on that owner's interest in the immovable.

50 §4807. Contractor, general contractor, subcontractor defined

51 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 B. A general contractor is a contractor who either:

2 (1) ~~Who contracts~~ Contracts to perform all or substantially all of a work; ~~or,~~

3 (2) ~~Who is~~ Is deemed to be a general contractor by R.S. 9:4808(B).

4 * * *
5 Comments - 2019

6 (a) Under this Section, contractors are those persons who contract directly
7 with an owner for the performance of all or a part of a work. Contractors are granted
8 a privilege by R.S. 9:4801(1) for the amounts due to them. Other persons who are
9 granted a privilege by R.S. 9:4801 are not contractors, even though they have a direct
10 contractual relationship with the owner.

11 (b) General contractors ordinarily contract to perform all or substantially all
12 of a work, as provided in Paragraph (B)(1). Nevertheless, Paragraph (B)(2), in
13 tandem with R.S. 9:4808(B), defines general contractors also to include any
14 contractor who files a timely notice of contract, even though the scope of his work
15 may be less than the entire construction project. In such a case, the work to be
16 performed by the contractor who timely files his notice of contract is deemed to be
17 a separate work for purposes of the Private Works Act. See R.S. 9:4808(B).

18 (c) Subsection C continues the former rule that the term "subcontractor"
19 includes sub-subcontractors of any tier. Accordingly, sub-subcontractors are granted
20 claims and privileges by R.S. 9:4802, as are those laborers who work for them and
21 those sellers and lessors who sell or lease movables to them. See R.S. 9:4802(A)(1),
22 (2), (3), and (4).

23 §4808. Work defined

24 A. A work is a single continuous project for the improvement, construction,
25 erection, reconstruction, modification, repair, demolition, or other physical change
26 of an immovable located in this state or its component parts.

27 B. If written notice of a contract ~~with a proper bond attached~~ is properly filed
28 within the time required by R.S. 9:4811, the work to be performed under the contract
29 shall be deemed to be a work separate and distinct from other portions of the project
30 undertaken by the owner. The contractor; whose notice of contract is so filed; shall
31 be deemed a general contractor.

32 C. The clearing, leveling, grading, test piling, cutting or removal of trees and
33 debris, placing of fill dirt, leveling of the land surface, demolition of existing
34 structures, or performance of other work on land for or by an owner ~~or the owner's~~
35 ~~contractor~~, in preparation for the construction or erection of a building or other
36 construction thereon to be substantially or entirely built or erected by a contractor,

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 shall be deemed a separate work to the extent the preparatory work is not a part of
2 the contractor's work ~~for the erection of the building or other construction~~. The
3 privileges granted by this Part for the work described in this Subsection shall have
4 no effect as to third persons acquiring rights in, to, or on the immovable before the
5 statement of claim or privilege is filed.

6 D. This Part does not apply to:

7 (1) The drilling of any well or wells in search of oil, gas, or water, or other
8 activities in connection with such a well or wells for which a privilege is granted by
9 R.S. 9:4861 et seq.

10 * * *

11 Comments - 2019

12 (a) The determination of what constitutes a "work" is relevant to an array of
13 issues that arise in the application of the Private Works Act. Because a general
14 contractor is defined by R.S. 9:4807(B) to include one who contracts to perform all
15 or substantially all of a work, a determination of whether a contractor is a general
16 contractor requires a determination of what "the work" is. The beginning of "the
17 work" often determines the date that privileges arising under the Private Works Act
18 become effective against third persons and, by extension, the priority of those
19 privileges against other encumbrances upon the immovable. See R.S. 9:4820(A) and
20 4821(A). The beginning of the work also determines whether notice of contract is
21 timely filed, an issue that in turn has important consequences, such as whether an
22 owner is relieved from liability under R.S. 9:4802(C), whether a seller of a movable
23 sold to a subcontractor must provide a notice of nonpayment under R.S.
24 9:4804(C)(1), whether R.S. 9:4811(D) operates to cause the forfeiture of the general
25 contractor's privilege, and when statements of claim or privilege must be filed under
26 R.S. 9:4822(B). The substantial completion or abandonment of the "work"
27 determines when a notice of termination may be filed and when the delays for filing
28 statements of claim or privilege begin to run. See R.S. 9:4822.

29 (b) The inclusion of the words "located in this state" in Subsection A makes
30 express a choice of law rule that was previously implicit in the Private Works Act.
31 The Act does not purport to regulate works upon real property located in other states,
32 nor to create privileges upon real property located in other states, even if the parties
33 are located or the contractual relationship is centered in this state. Subsection A does
34 not, however, preclude the application of the Private Works Act to works upon the
35 outer continental shelf as surrogate federal law. See 43 U.S.C. 1333. It is important
36 to recognize that the word "immovable" in Subsection A is not limited to land. See
37 R.S. 9:4810(4). Construction or repair within Louisiana of buildings that are
38 unattached to land or that are ultimately relocated outside Louisiana nonetheless
39 constitutes a work triggering the protections of the Private Works Act. See *P.H.A.C.*
40 *Services, Inc. v. Seaways Intern., Inc.*, 403 So. 2d 1199 (La. 1981).

41 (c) Under Subsection B, if notice of contract with a contractor who would
42 not otherwise be considered a general contractor is timely filed, the contractor is
43 nonetheless deemed to be a general contractor, and the work to be performed under
44 the contract is conclusively deemed to be a separate work, even though it may be part
45 of a larger project being carried out by the owner. The 2019 revision to the Private

1 Works Act removes the former requirement of the filing of a bond with the notice
2 of contract in order to achieve this effect. Thus, where such a notice of contract is
3 timely filed, with or without a bond, issues such as the time for filing statements of
4 claim or privilege arising from the work covered by the contract, the liability of the
5 surety, and all other aspects of the Private Works Act, are determined independently
6 of other work being carried out by the owner. On the other hand, where a notice of
7 contract is not filed in a timely manner, the question of whether work done by
8 several contractors, or partly by the owner himself and partly by contractors, is so
9 substantially interrelated as to constitute a single work is left to the determination of
10 the courts in light of Subsection A.

11 (d) Subsection C considers preliminary site work to be in substance a
12 separate work, unless it is performed by a contractor who is to construct a building
13 or other improvement following the site work. This rule has important
14 consequences. First, for those who are involved in the preliminary site work, the
15 delays within which they must file a statement of claim or privilege will commence
16 to run upon the substantial completion of the site work. Second, the privileges of
17 those claimants who are involved in the construction of the building will not take
18 effect against third persons or rank from the time that the preliminary site work
19 began, but rather from the later date that work is begun as provided in R.S.
20 9:4820(A)(2). The 2019 revision removes a prior legislative amendment that had
21 made Subsection C applicable even when the site work was performed by the
22 contractor engaged to construct the building, so long as this site work was governed
23 by a separate contract. This prior amendment was largely unnecessary because,
24 under R.S. 9:4820(A)(2), preliminary site work, even if performed by the contractor
25 who will construct the building, does not mark the commencement of work or
26 determine the date that privileges arising under the Private Works Act will be
27 effective against third persons. The effect of the change made by the 2019 revision
28 is to afford persons performing preliminary site work for the building contractor the
29 same period of time within which to file a statement of claim or privilege following
30 completion of the entire work as is afforded to other claimants.

31 (e) The last sentence of Subsection C is an exception to R.S. 9:4820(A),
32 which provides that the filing of a notice of contract or the commencement of work
33 fixes the time when privileges arising under the Private Works Act become effective
34 as to third persons. Privileges for preliminary site work are effective as to third
35 persons only from the time that a statement of claim and privilege is filed. Thus, if
36 the owner sells the immovable before a statement of claim or privilege is filed, the
37 privilege of a claimant who performed only preliminary site work is lost, even if the
38 period allowed for its filing has not yet expired. The last sentence of Subsection C
39 does not, however, affect the ranking of the claimant's privilege against other persons
40 holding privileges arising under the Private Works Act. Once a privilege for site
41 work is preserved by the filing of a statement of claim or privilege, it ranks equally
42 with other Private Works Act privileges of the same nature, as provided in R.S.
43 9:4821(B), subject to the limited exception made in R.S. 9:4821(C). The last
44 sentence of Subsection C of this Section has an indirect effect on the ranking of
45 mortgages against privileges arising from preliminary site work (other than laborer's
46 privileges), by delaying the effectiveness of the privilege against third persons, and
47 accordingly its rank against mortgages, until the time of filing. See R.S.
48 9:4820(A)(2).

49 (f) R.S. 9:4820(B), which applies only when a notice of contract is not filed
50 with respect to a work involving an existing building or other structure, provides that
51 the suspension of work for thirty days or more causes that part of the work
52 performed before the suspension to be considered, for ranking purposes only, to be
53 a separate work from the work performed afterward.

1 (g) Subsection D avoids overlap with other statutes establishing claims and
2 in some instances privileges arising out of specific kinds of work. Where those
3 statutes apply, the Private Works Act is inapplicable.

4 §4809. Substantial completion and abandonment of work defined

5 A. A work is substantially completed when either of the following occurs:

6 (1) The last work is performed on, or materials are delivered to the site of the
7 immovable or to that area with respect to which a notice of termination is filed under
8 R.S. 9:4822(F).

9 (2) The owner accepts the improvement or possesses or occupies the
10 immovable, or that area of the immovable with respect to which a notice of
11 termination is filed, although minor or inconsequential matters remain to be finished
12 or minor defects or errors in the work are to be remedied.

13 B. A work is abandoned by the owner if he terminates the work and notifies
14 persons engaged in its performance that he no longer desires to continue it or he
15 otherwise objectively and in good faith manifests the abandonment or discontinuance
16 of the project.

17 Comments - 2019

18 The Section is new, but it carries forward without substantive change
19 definitions previously found in R.S. 9:4822(H) and (I). The meanings of substantial
20 completion and abandonment of a work are important because either event marks the
21 commencement of the delays for filing statements of claim or privilege if no notice
22 of termination is filed. R.S. 9:4822(A), (B), and (C).

23 §4810. Miscellaneous definitions

24 For purposes of this Part:

25 (1) A "business day" is any day except for Saturdays, Sundays, and other
26 days on which the office of the clerk of court is closed in accordance with R.S.
27 1:55(E) in the parish of location of the immovable upon which work is to be or has
28 been performed.

29 (2) A "commercial courier" is any juridical person that has as its primary
30 purpose the delivery of letters and parcels of any type.

1 land and buildings, but also other constructions that are permanently attached to the
 2 ground, even when those other constructions belong to someone who is not the
 3 owner of the ground. Under the Civil Code, buildings are always immovable,
 4 whether owned by the owner of the ground or someone else, but other constructions
 5 are immovable only if they belong to the owner of the ground. If owned by someone
 6 other than the owner of the ground, these other constructions are movable. See Civil
 7 Code Article 464, Comment (d). The definition of the term "immovable" in this
 8 Section includes all such other constructions permanently attached to the ground,
 9 regardless of ownership. This more expansive definition has several consequences.
 10 First, privileges arising under the Private Works Act will encumber these other
 11 constructions, even though they are classified as movables under the Civil Code.
 12 Second, work on other constructions permanently attached to the ground, even if not
 13 involving a physical alteration of the land itself, will constitute a "work" for purposes
 14 of the Private Works Act and will trigger its protections.

15 (d) This Section defines the terms "professional consultant" and
 16 "professional subconsultant" with the professional designations currently used by the
 17 engineering, surveying, and architectural professions. Only those surveyors,
 18 engineers, and architects who are properly licensed or certified under the licensing
 19 statutes applicable to their work are entitled to claims and privileges afforded to
 20 professional consultants and professional subconsultants under the Private Works
 21 Act.

22 (e) "Qualified inspectors" are authorized by the Private Works Act to execute
 23 affidavits that work has not begun. See R.S. 9:4822(C) and 4832(C). Although the
 24 defined term is new, its use represents no change in the law, for its definition
 25 encompasses the same persons who were authorized to execute such affidavits under
 26 prior law.

27 SUBPART C. WORK PERFORMED BY GENERAL CONTRACTORS

28 §4811. Notice of a contract with a general contractor to be filed

29 A. Written notice of a contract between a general contractor and an owner
 30 shall be filed as provided in R.S. 9:4831 before the contractor begins work, as
 31 defined by R.S. 9:4820, on the immovable. The notice:

32 * * *

33 (2) Shall contain ~~the legal property~~ a complete property description of the
 34 immovable upon which the work is to be performed and the name, if any, of the
 35 project.

36 * * *

37 B. A notice of contract is not improperly filed because of an error in or
 38 omission from the notice in the absence of a showing of actual prejudice by a
 39 claimant or other person acquiring rights in the immovable. An error in or omission
 40 of the identity of the parties or their mailing addresses or the improper ~~identification~~

1 of contract filed without a bond attached, though effective for those purposes, will
2 not satisfy the requirements of R.S. 9:4802(C) and accordingly will not insulate the
3 owner from claims and privileges arising under R.S. 9:4802.

4 (e) Subsection D changes and clarifies the law in two important respects.
5 First, it increases to \$100,000 the threshold that applies to the requirement that a
6 general contractor cause notice of his contract to be filed before beginning work.
7 Although a general contractor is not required to file notice of a contract having a
8 price less than this threshold, the owner, in the absence of a timely filed notice of
9 contract and bond, will still be exposed to liability for claims and privileges arising
10 under R.S. 9:4802, regardless of whether the price of the contract is less than the
11 threshold. The second change is a rejection of the rationale of cases allowing general
12 contractors who fail to comply with the filing requirement of Subsection D
13 nonetheless to assert a privilege for labor and services that the contractor and his own
14 employees performed, on the theory that, to that extent, the general contractor is
15 acting as a mere ordinary contractor rather than a general contractor. See *Burdette*
16 *v. Drushell*, 837 So. 2d 54 (La. App. 1st Cir. 2002) and *Tharpe and Brooks, Inc. v.*
17 *Arnott Corporation*, 406 So. 2d 1 (La. App. 1st Cir. 1981). Where a person who is
18 defined by the Private Works Act as a general contractor fails to file a timely notice
19 of a contract having a price exceeding \$100,000, the consequence is that he is
20 deprived of any privilege under the Act without exception and is prohibited from
21 filing a statement of claim or privilege. If the general contractor nonetheless files a
22 statement of claim or privilege, the owner is entitled to obtain its cancellation under
23 R.S. 9:4833.

24 (f) The subject matter of former Subsection E now appears in R.S. 9:4832(C)
25 and (D).

26 §4812. Bond required; terms and conditions

27 A. To be entitled to the benefits of the provisions of R.S. 9:4802(C), every
28 owner shall require a general contractor to furnish and maintain a bond of a solvent,
29 legal surety for the work to be performed under the contract. The bond shall be
30 attached to the notice of the contract when it is filed. If the price of the work
31 stipulated or reasonably estimated in the general contractor's contract exceeds one
32 hundred thousand dollars, the bond shall be issued by a surety company licensed to
33 do business in this state.

34 B. The amount of the bond shall not be less than the ~~following amounts or~~
35 ~~percentages of the price of the work stipulated~~ stated or estimated in the ~~contract:~~
36 notice of contract.

37 (1) ~~If the price is not more than ten thousand dollars the amount of the bond~~
38 ~~shall be one hundred percent of the price.~~

1 (b) The tiered percentages previously found in Subsection B had been
2 substantially unchanged since 1926. Subsection B now conforms to the modern
3 practice of requiring that the amount of the bond be at least 100% of the stipulated
4 or estimated price of the contract in all cases.

5 (c) Subsection C recognizes the difference between a "performance and
6 payment" bond and a "payment" bond. Only the latter is required to comply with the
7 Act. Subsection C establishes a presumption that a bond given under the Act
8 comprehends both payment and performance unless a guarantee of the contractor's
9 performance is expressly excluded.

10 (d) A bond given to comply with the Private Works Act creates a legal
11 suretyship. See Civil Code Article 3043. Accordingly, as Subsection D provides,
12 the bond is deemed to conform to the requirements of the Act, despite any provision
13 of the bond to the contrary. See *Bowles and Edens Co. v. H & H Sewer Systems,*
14 *Inc.*, 324 So. 2d 528 (La. App. 1st Cir. 1975). See also Civil Code Article 3066.
15 Subsection D creates a presumption that a bond for a contractor is intended to
16 comply with the Act if it is filed with the notice of contract. It is implicit that such
17 filing would have to be made with the knowledge or consent of the surety.

18
19 (e) Subsection E incorporates rules that have been jurisprudentially
20 developed or provided in predecessors to the present Private Works Act. See
21 *Electrical Supply Co. v. Eugene Freeman, Inc.*, 152 So. 510 (La. 1933); *Central*
22 *Louisiana Electric Company v. Giant Enterprises, Inc.*, 371 So. 2d 641 (La. App. 3d
23 Cir. 1979); and *E. Rabalais & Son, Inc. v. United Bonding Ins. Co.*, 226 So. 2d 528
24 (La. App. 3d Cir. 1969). Paragraph (E)(1) has been revised to delete the reference
25 to indemnification under former Article 3057 of the Civil Code of 1870. Under
26 present suretyship law, a surety has the right to require security when, among other
27 circumstances, the principal obligation would be due but for an extension of its term
28 to which the surety did not consent. See Civil Code Article 3053(4). In the case of
29 an extension made without its consent, the surety would also be entitled to whatever
30 indemnification its contract with the contractor provides.

31 §4813. Liability of the surety

32 * * *

33 E. The surety's liability, except as to the owner, is extinguished as to ~~all~~
34 ~~persons~~ each person who ~~fail~~ fails to institute an action asserting ~~their~~ his claims or
35 rights against the owner, the contractor, or the surety ~~within~~ no later than one year
36 after the expiration of the time specified in R.S. 9:4822 for ~~claimants~~ the person to
37 file ~~their~~ his statement of claim or privilege.

38 F. A surety who pays a person to whom the surety is liable is legally
39 subrogated to the person's contractual rights but may not assert by subrogation the
40 person's claims or privileges arising under this Part.

41 Comments - 2019

42 (a) The liability of a general contractor's surety is regulated by the rules of
43 the suretyship rather than those of principal solidary obligors. See *Wisconsin Capital*
44 *Corp. & Trans. World Land Title Corp.*, 378 So. 2d 495 (La. App. 4th Cir. 1979);

1 *Louisiana Bank & Trust Co. v. Boutte*, 309 So. 2d 274 (La. 1975); and *Aiavolasiti*
2 *v. Versailles Gardens Land Dev. Co.*, 371 So. 2d 755 (La. 1979). As is now the case
3 with all sureties, the pleas of division and discussion are unavailable to a surety that
4 issues a bond under the Private Works Act. See Civil Code Article 3045.

5 (b) Subsection B provides the order of priority of payment by the surety.
6 Those who have properly preserved their claims by filing a timely statement of claim
7 or privilege under R.S. 9:4822 are granted the highest priority. If payment of their
8 claims does not exhaust the amount of the bond, payment is made to other claimants
9 to whom the contractor is otherwise liable, in the order of presentation of their
10 claims. Thus, if a valid, undisputed claim is presented to the surety, the surety can
11 safely pay it after having paid the claims of those who properly preserved their
12 privileges without having to wait to see if other claims are presented.

13 (c) Under Subsection D, delivery of a statement of claim or privilege to a
14 surety thirty days before filing suit is not a necessary step to preserve the claim, but
15 a suit during the period allowed under R.S. 9:4822 for filing statements of claim or
16 privilege would be premature without such advance notice. Subsection D does not
17 apply after expiration of that period.

18 (d) Subsection E provides that a claimant must file suit against the surety no
19 later than one year after the expiration of the time specified in R.S. 9:4822 for that
20 claimant to file his statement of claim or privilege. This is conceivably a longer
21 period of time than that allowed for the claimant to bring a suit against the owner
22 under R.S. 9:4823(A)(2), which requires the filing of suit against the owner no later
23 than one year after the claimant files his statement of claim or privilege. The reason
24 that a longer period of time is provided for suit against the surety is to accommodate
25 the rule in R.S. 9:4823(B) that a claim against a contractor is not extinguished by a
26 claimant's failure to file a timely statement of claim or privilege if a statement of the
27 claim or privilege is delivered to the contractor within the period allowed for its
28 filing by R.S. 9:4822. Under those circumstances, the claimant is permitted to bring
29 suit against the contractor and his surety no later than one year after the expiration
30 of the time given the claimant under R.S. 9:4822 to file his statement of claim or
31 privilege. That is the same period of time provided by Subsection E of this Section.
32 Of course, if R.S. 9:4823(B) does not apply and no suit is filed against the owner
33 before the expiration of one year after the filing of the claimant's statement of claim
34 or privilege, as required by R.S. 9:4823(A), then the claimant's rights against the
35 contractor will be lost, and the surety's liability to the claimant, being an accessory
36 to the contractor's liability, will likewise be extinguished.

37 (e) The filing of a concursus joining a claimant and an owner or contractor
38 constitutes the institution of an action within the meaning of Subsection E, even if
39 the claimant is not the plaintiff in the concursus. See *Continental Cas. Co. v.*
40 *Associated Pipe & Supply Co.*, 310 F. Supp. 1207, 1215 (E.D. La. 1969), affirmed
41 in part, vacated in part, 447 F.2d 1041 (5th Cir. 1971).

42 (f) Subsection F is new and is intended to clarify the circumstances under
43 which subrogation operates in favor of, or can be asserted by, a surety. Just as a
44 contractor is legally subrogated under R.S. 9:4802(F) to the contractual claims of
45 claimants that he pays but cannot assert subrogation to their claims against the owner
46 or the privileges arising under the Private Works Act, a surety who makes payment
47 to a claimant is likewise subrogated to the claimant's contractual rights but cannot
48 claim either conventional or legal subrogation to his rights against the owner.

49 (g) Subsection F does not prevent the surety from claiming subrogation to
50 the owner's rights under general rules of suretyship. See Civil Code Article 3048.

1 SUBPART D. CLAIMS AND PRIVILEGES; EFFECTIVENESS;
2 PRESERVATION; RANKING; EXTINGUISHMENT

3 §4820. Privileges; effective date

4 A. ~~The~~ Except as otherwise provided in this Part, the privileges granted by
5 this Part arise and are effective as to third persons when the earlier of the following
6 occurs:

7 (1) Notice of the contract is filed as required by R.S. 9:4811; ~~or,~~

8 (2) The work is begun by placing materials at the site of the immovable to
9 be used in the work or conducting other work at the site of the immovable the effect
10 of which is visible from a simple inspection and reasonably indicates that the work
11 has begun. For these purposes, the site of the immovable is defined as the area
12 within the boundaries of the property. In determining when work has begun,
13 services rendered by a professional consultant, professional subconsultant, or other
14 surveyor, architect, or engineer, or the placing of materials having an aggregate price
15 of less than one hundred dollars on the immovable, driving of test piling, cutting or
16 removal of trees and debris, placing of fill dirt, demolition of existing structures, and
17 clearing, grading, or leveling of the land surface shall not be considered; ~~nor shall the~~
18 placing of materials having an aggregate price of less than one hundred dollars on
19 the immovable be considered. For these purposes, the site of the immovable is
20 defined as the area within the boundaries of the property.

21 B.(1) If ~~the~~ work for which notice of contract was not filed as required by
22 R.S. 9:4811 is for the addition, modification, or repair of an existing building or
23 other construction, the suspension of the work for thirty days or more shall cause that
24 part of the work performed before a third person's rights become effective shall the
25 suspension to be considered, for the purposes of R.S. 9:4821 ranking privileges
26 arising under this Part against the rights of third persons, be considered a distinct
27 separate work from the work performed after such rights become effective thereafter.
28 A work is suspended if the cost of the work done, in labor and materials, is less than

1 one hundred dollars during ~~the thirty-day~~ a period of thirty days or more immediately
2 ~~preceding the time such third person's rights become effective as to third persons.~~

3 (2) A privilege arising under this Part with respect to work performed before
4 the suspension, other than a privilege arising under R.S. 9:4801(2) or a privilege
5 securing a claim arising under R.S. 9:4802(A)(2), retains its priority under R.S.
6 9:4821 over the rights of third persons acquired prior to the resumption of work only
7 if the claimant having the privilege files a statement of claim or privilege no later
8 than sixty days after the commencement of the suspension.

9 C. A person acquiring or intending to acquire a mortgage, privilege, or other
10 right; in or on an immovable may conclusively rely upon an affidavit made by a
11 ~~registered or certified engineer or surveyor, licensed architect, or building~~ qualified
12 ~~inspector employed by the city or parish or by a lending institution chartered under~~
13 ~~federal or state law, to the effect that~~ states he inspected the immovable at a specified
14 time and work had not then been commenced nor materials placed at its site,
15 provided the inspection occurs, and the affidavit is filed, within four business days
16 before or within four business days after the execution of the affidavit, and filing of
17 the mortgage, privilege, or other document creating the right is filed before or within
18 four business days of the filing of the affidavit. The correctness of Insofar as the
19 rights of the person to whom or for whom the affidavit is given are concerned, the
20 facts recited in the affidavit shall be deemed to be true at the time of the inspection
21 and to remain true at the time of the filing of the mortgage, privilege, or other
22 document, and the correctness of those facts may not be controverted to affect the
23 priority of the rights of the person to whom or for whom it is given, unless actual
24 fraud by such person is ~~proven~~ proved. A person who gives a false ~~or fraudulent~~
25 affidavit shall be responsible for any loss or damage suffered by any person whose
26 rights are adversely affected.

27 D. ~~A person acquiring or intending to acquire a mortgage, privilege, or other~~
28 ~~right under Subsection C of this Section shall have priority in accordance with R.S.~~
29 ~~9:4821, regardless of whether work has begun or materials were delivered to the job~~

1 ~~site after the effective date and time of the affidavit, but prior to the recordation of~~
2 ~~the mortgage, privilege, or other right, provided that the document creating the right~~
3 ~~was filed before or within four business days of the filing of the affidavit.~~
4 Notwithstanding the other provisions of this Part, the privileges granted upon an
5 immovable by R.S. 9:4801(5) and those securing a claim arising under R.S.
6 9:4802(A)(5) shall have no effect as to third persons acquiring rights in, to, or on the
7 immovable before the statement of claim or privilege is filed.

8 E. If, following cancellation of a notice of contract in accordance with R.S.
9 9:4832(C), another notice of contract is filed, the date of the later filing shall be the
10 date of filing of notice of contract for purposes of this Section.

11 Comments - 2019

12 (a) This Section establishes when privileges arising under the Private Works
13 Act become effective as to third persons. The date that those privileges take effect
14 as to third persons is relevant chiefly for two reasons. First, a privilege that is not yet
15 effective as to third persons will not survive an alienation of the immovable.
16 Secondly, the date that a Private Works Act privilege becomes effective as to third
17 persons serves as a foundation for determining the priority of the privilege against
18 other encumbrances upon the immovable. See R.S. 9:4821.

19 (b) The general rule under the Civil Code is that, subject to exceptions
20 provided by law, privileges upon immovables are not effective against third persons
21 until recorded. See Civil Code Article 3274. This Section constitutes an exception
22 to that general rule, because it permits Private Works Act privileges to be effective
23 as to third persons, even without filing, provided that a statement of claim or
24 privilege is ultimately filed to preserve the privilege within the time required by R.S.
25 9:4821. Under Subsection A, most privileges arising under the Act are effective as
26 to third persons when notice of contract is filed in accordance with R.S. 9:4811 or
27 when work is begun, whichever occurs first. Paragraph (A)(2) states the criteria used
28 to determine when work has begun. For purposes of determining when work has
29 begun, preliminary site work, whether performed by the contractor or someone else,
30 is ignored, as are surveying, architectural, and engineering work and the placement
31 on the site of materials having an aggregate value of less than \$100.

32 (c) As its introductory clause indicates, the basic rule stated in Subsection
33 A is itself subject to exceptions found in other provisions of the Act. One such
34 exception appears in Subsection D, which restates, with some modification, a rule
35 previously provided in former R.S. 9:4822(D)(1)(b). Under Subsection D, privileges
36 arising under R.S. 9:4801(5) and those securing a claim arising under R.S.
37 9:4802(A)(5) are not effective as to third persons until a statement of claim or
38 privilege is filed. See *G.R.W. Engineers, Inc. v. Elam*, 557 So. 2d 725 (La. App. 2d
39 Cir. 1990); *C & J Contractors v. American Bank & Trust Co.*, 559 So. 2d 810 (La.
40 App. 1st Cir. 1990). A similar exception applies to privileges arising from
41 preliminary site work. See R.S. 9:4808(C).

42 (d) Subsection B, which continues a rule contained in the former provision,
43 has been revised in order to state more clearly the effect of a temporary suspension
44 of a work involving an existing building or other structure when notice of contract

1 has not been filed. A suspension of work of that nature for thirty days or more
2 causes that part of the work performed before the suspension to be considered, for
3 ranking purposes only, to be a separate work from the work performed afterward.
4 Under Paragraph (B)(2), the rights of a claimant having a Private Works Act
5 privilege, other than a laborer's privilege, with respect to work performed before the
6 suspension will become subject to mortgages and other third party rights acquiring
7 the effect of recordation prior to the resumption of work, unless the claimant files a
8 statement of claim or privilege no later than sixty days after the commencement of
9 the suspension. Subsection B does not require the claimant to file within that period
10 in order to preserve his claim and privilege, and he is permitted to defer filing until
11 any time before the ordinary period for filing claims and privileges under R.S.
12 9:4822 expires following completion of the work. If the claimant chooses to do so,
13 however, he runs the risk that his privilege will become subject to mortgages and
14 other rights of third persons acquired prior to the resumption of work. The words
15 "other construction" in Subsection B mean a construction other than a building and
16 are not a general reference to other types of construction work. See Civil Code
17 Article 463.

18 (e) Subsection C continues the concept that a mortgagee or other person
19 intending to acquire a right in an immovable may conclusively rely upon the facts
20 asserted in a timely filed affidavit from a qualified inspector that work has not begun.
21 The effect of the affidavit is to preclude Private Works Act claimants from
22 contesting the facts recited in the affidavit and claiming priority under R.S.
23 9:4821(A)(2) on the ground that work had actually already begun, despite the
24 recitations of the affidavit. The affidavit does not, however, necessarily assure the
25 mortgagee or other person obtaining the affidavit of priority over Private Works Act
26 privileges. The affidavit may fail to contain sufficient factual recitations to negate
27 the commencement of work or, contrary to the intended effect of the affidavit, may
28 recite facts establishing that work had actually begun. Moreover, if notice of
29 contract has already been filed, an affidavit to the effect that work has not yet begun
30 will be useless in establishing the mortgagee's priority over Private Works Act
31 privileges arising out of that work, because those privileges will be effective against
32 third persons under Subsection A as of the time of filing the notice of contract,
33 irrespective of the fact that work has not yet begun, and will therefore have priority
34 over mortgages filed after the notice of contract. See R.S. 9:4821(A)(2).

35 (f) Subsection C both alters and clarifies prior provisions of the Private
36 Works Act applicable to affidavits of no work. First, it provides that both the
37 inspection and the filing of the affidavit must occur within four business days before,
38 or within four business days after, the filing of the mortgage or other document
39 creating the rights of the person obtaining the affidavit. This is intended to ensure
40 that the facts recited in the affidavit are not unreasonably stale, while at the same
41 time preventing parties from manufacturing evidence long after the fact. Second,
42 Subsection C provides that the facts recited in the affidavit are not only deemed to
43 be true at the time of the inspection but also to remain true through the critical
44 moment in time when the mortgage or other document is filed. This provision is
45 intended to obviate the need for a mortgagee to arrange for a second inspection and
46 to file a second affidavit of no work after filing its mortgage. As under prior law, the
47 correctness of the facts recited in a timely filed affidavit may not be controverted to
48 affect the priority of the rights of the person obtaining the affidavit in the absence of
49 proof of fraud by that person.

50 (g) Subsection E is new, though it restates without substantive change a rule
51 previously found in former R.S. 9:4811(E). It specifies the effect of cancelling a
52 notice of contract under R.S. 9:4832(C) and later refileing another notice of contract.

1 §4821. Ranking of privileges arising under this Part

2 A. ~~The privileges granted by R.S. 9:4801 and 4802 rank among themselves~~
3 ~~and as to other mortgages and privileges in the following order of priority:~~

4 ~~(1) Privileges for ad valorem taxes or local assessments for public~~
5 ~~improvements against the property, liens, and privileges granted in favor of parishes~~
6 ~~for reasonable charges imposed on the property under R.S. 33:1236, liens and~~
7 ~~privileges granted in favor of municipalities for reasonable charges imposed on~~
8 ~~property under R.S. 33:4752, 4753, 4754, 4766, 5062, and 5062.1, and liens and~~
9 ~~privileges granted in favor of a parish or municipality for reasonable charges~~
10 ~~imposed on the property under R.S. 13:2575 are first in rank and concurrent~~
11 ~~regardless of the dates of recordation or notation of such liens and privileges in any~~
12 ~~public record, public office, or public document.~~

13 ~~(2) Privileges granted by R.S. 9:4801(2) and 4802(A)(2) rank next and~~
14 ~~equally with each other.~~

15 ~~(3) Bona fide mortgages or vendor's privileges that are effective as to third~~
16 ~~persons before the privileges granted by this Part are effective rank next and in~~
17 ~~accordance with their respective rank as to each other.~~

18 ~~(4) Privileges granted by R.S. 9:4801(3) and (4) and 4802(A)(1), (3), and (4)~~
19 ~~rank next and equally with each other.~~

20 ~~(5) Privileges granted by R.S. 9:4801(1) and (5) rank next and equally with~~
21 ~~each other.~~

22 ~~(6) Other mortgages or privileges rank next and in accordance with their~~
23 ~~respective rank as to each other.~~

24 A. The privileges granted by this Part are superior to all mortgages and other
25 privileges, regardless of the dates on which the mortgages or privileges become
26 effective as to third persons, except as follows:

27 (1) All privileges granted by this Part are inferior to privileges for ad
28 valorem taxes or local assessments for public improvements against the immovable,
29 privileges granted in favor of parishes for reasonable charges imposed on the

1 immovable under R.S. 33:1236, privileges granted in favor of municipalities for
2 reasonable charges imposed on the immovable under R.S. 33:4752, 4753, 4754,
3 4766, 5062, and 5062.1, and privileges granted in favor of a parish or municipality
4 for reasonable charges imposed on the immovable under R.S. 13:2575.

5 (2) Each privilege granted by this Part other than those arising under R.S.
6 9:4801(2) and those securing a claim arising under R.S. 9:4802(A)(2) is inferior to
7 bona fide mortgages and vendor's privileges that are effective as to third persons
8 before the privilege granted by this Part becomes effective as to third persons.

9 ~~B. A person acquiring or intending to acquire a mortgage, privilege, or other~~
10 ~~right under R.S. 9:4820(D) shall have priority in accordance with the provisions of~~
11 ~~this Section, regardless of whether work has begun or materials were delivered to the~~
12 ~~jobsite after the effective date and time of the affidavit, but prior to the recordation~~
13 ~~of the mortgage, privilege, or other right, provided that the document creating the~~
14 ~~right was filed before or within four business days of the filing of the affidavit.~~
15 Except as otherwise provided in Subsection C of this Section, the privileges granted
16 by this Part rank among themselves in the following order of priority, regardless of
17 whether they arise from the same work or different works and regardless of the dates
18 on which the privileges become effective as to third persons:

19 (1) Privileges granted by R.S. 9:4801(2) and those securing a claim arising
20 under R.S. 9:4802(A)(2) rank first and concurrently with each other.

21 (2) Privileges granted by R.S. 9:4801(3) and (4) and those securing a claim
22 arising under R.S. 9:4802(A)(1), (3), and (4) rank next and concurrently with each
23 other.

24 (3) Privileges granted by R.S. 9:4801(1) and (5) and those securing a claim
25 arising under R.S. 9:4802(A)(5) rank next and concurrently with each other.

26 C. A privilege under this Part that is superior to a mortgage or vendor's
27 privilege in accordance with Subsection A of this Section is also superior to all
28 privileges under this Part that are inferior to the mortgage or vendor's privilege.

1 D. A privilege under this Part encumbering a construction that is
2 permanently attached to the ground and belongs to a person other than the landowner
3 is superior to all conflicting security interests created under Chapter 9 of the Uniform
4 Commercial Code other than those that were perfected before the privilege becomes
5 effective against third persons or that are perfected by a financing statement filed
6 before the privilege becomes effective against third persons, if there is no period
7 thereafter when there is neither filing nor perfection.

8 Comments - 2019

9 (a) Subject to numerous exceptions provided by law, the general rule by
10 which encumbrances upon immovables are ranked in Louisiana is that privileges,
11 which rank among themselves according to their nature, outrank mortgages, and
12 mortgages rank among themselves in the order of their filing in the mortgage
13 records. See Civil Code Articles 3186, 3187, 3307(3), 3338(1), and 3346(A). Prior
14 to its revision in 2019, the Private Works Act appeared to supplant this general rule
15 with a scheme for ranking all mortgages and privileges that burden an immovable
16 and, in some cases, re-ordered priorities based upon the fortuity of the existence of
17 a Private Works Act privilege. As revised in 2019, the scope of this Section is
18 limited to addressing the ranking of Private Works Act privileges among themselves
19 and against other encumbrances that burden an immovable. The relative ranking of
20 those other encumbrances among themselves is left to other law.

21 (b) Subsection A, which ranks Private Works Act privileges against
22 mortgages and other privileges upon an immovable, makes no substantive change in
23 the law. As Paragraph (A)(1) provides, all Private Works Act privileges are inferior
24 to privileges for governmental charges of the nature described in that Paragraph.
25 Private Works Act privileges are by their nature superior to all other privileges and
26 all mortgages, with one exception: Private Works Act privileges, other than those
27 in favor of laborers, are inferior to mortgages and vendor's privileges that became
28 effective as to third persons before the Private Works Act privileges become
29 effective as to third persons. This is an exception to the general rule of the Civil
30 Code giving priority to privileges over all mortgages. See Civil Code Article 3186.
31 The time that Private Works Act privileges become effective as to third persons is
32 determined by R.S. 9:4820 and, in the case of privileges for preliminary site work,
33 R.S. 9:4808(C). When mortgages and vendor's privileges become effective as to
34 third persons is determined by other law. See, e.g., *G.R.W. Engineers, Inc. v. Elam*,
35 557 So. 2d 725 (La. App. 2d Cir. 1990); *American Bank & Trust Co. v. F & W*
36 *Const.*, 357 So. 2d 1226 (La. App. 2d Cir. 1978). See generally Civil Code Articles
37 3274, 3298(B), and 3338(1); R.S. 9:5551.

38 (c) Subsection A continues the rule that privileges arising under the Private
39 Works Act in favor of laborers are superior to all mortgages, vendor's privileges, and
40 other privileges, even those that were effective as to third persons before
41 commencement of work or filing of notice of contract.

42 (d) Subsection B ranks privileges arising under the Private Works Act among
43 themselves. Highest ranking is accorded to laborers. The second tier of ranking is
44 shared by subcontractors, sellers, and lessors. Relegated to the lowest tier of ranking
45 are contractors, professional consultants, and professional subconsultants.

1 (e) Subsection B makes explicit a concept that could be inferred from former
2 R.S. 9:4821 but was expressly stated only in the Comments to that Section and to
3 former R.S. 9:4808: Private Works Act privileges of the same nature rank equally,
4 regardless of whether they arise from the same work or different works and
5 regardless of the dates on which the privileges become effective as to third persons.
6 This is consistent with the general rules of the Civil Code that privileges are ranked
7 by their nature, rather than by the order in which they arise or are filed, and that
8 privileges of the same nature rank concurrently. See Civil Code Articles 3187 and
9 3188. Thus, with the exception stated in Subsection C, privileges of subcontractors,
10 sellers, and lessors all enjoy equal rank among themselves, even if they arise from
11 different works and even if one of those works was completed before the other
12 began.

13 (f) Subsection C is new. It is intended to reduce the possibility of circular
14 priorities resulting from application of the ranking rules discussed above. Any
15 system that ranks encumbrances by different criteria, such as by the nature of some
16 but by the order of filing of others, implicitly permits the possibility of so-called
17 "vicious circles." This was possible under the former system, and it remains possible
18 under the 2019 revision. For instance, if two different works are started and
19 completed in two successive years, and a mortgage is filed after one work is
20 completed but before the second work begins, a contractor's privilege arising from
21 the first work will prime the mortgage, which in turn will prime a subcontractor's
22 privilege arising from the second work, which will, by its nature, prime the
23 contractor's privilege arising from the first work. Subsection C is intended to resolve
24 the ranking problem that arises under these circumstances by breaking the vicious
25 circle. The contractor's privilege, which in this example unquestionably has priority
26 over the intervening mortgage, is also granted priority over the subcontractor's
27 privilege by operation of Subsection C. This analysis assumes, of course, that the
28 contractor takes proper action to preserve his privilege. See R.S. 9:4811(D) and
29 4822. Subsection C will not eliminate all vicious circles, and if one arises that
30 cannot be resolved by application of Subsection C, the court will have to resort to
31 other principles to determine the proper distribution of proceeds of the immovable,
32 such as application of the rule under Civil Code Article 3134 that creditors are
33 entitled to share ratably in the proceeds of a debtor's property in the absence of a
34 preference authorized or established by legislation.

35 (g) Subsection D is new. It is necessitated by the definition of the term
36 "immovable" in the 2019 revision of the Act to include not only land and buildings
37 but also other constructions that are permanently attached to the ground, even when
38 those other constructions belong to someone who is not the owner of the ground.
39 See R.S. 9:4810(4). This definition of the term "immovable" will cause Private
40 Works Act privileges to encumber those other constructions, despite their
41 classification as movables under property law. Because they are movables, it is
42 possible that they may be subject to security interests created and perfected under
43 Chapter 9 of the Uniform Commercial Code, perhaps even by a filing in another
44 jurisdiction. Subsection D supplies the needed ranking rule: A Private Works Act
45 privilege is inferior to those conflicting Chapter 9 security interests that were
46 perfected before the privilege became effective against third persons or that are later
47 perfected by a financing statement that was filed before the privilege became
48 effective against third persons. This allows Chapter 9 security interests to continue
49 to benefit from the "first-to-file-or-perfect" priority rule that is generally applicable
50 under Chapter 9. See R.S. 10:9-322(a)(1). The date of filing of the statement of
51 claim or privilege filed to preserve the Private Works Act privilege is, however,
52 irrelevant. A similar priority rule appears in the statute ranking Chapter 9 security
53 interests against privileges for labor, services, or supplies provided in connection
54 with oil, gas, and water wells. See R.S. 9:4870(B)(3).

1 §4822. Preservation of claims and privileges

2 A. Except as otherwise provided in Subsections B and C of this Section, a
3 person granted a privilege under R.S. 9:4801 or a claim and privilege under R.S.
4 9:4802 shall file a statement of his claim and privilege no later than sixty days after:

5 (1) The filing of a notice of termination of the work.

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

8 B. If a notice of contract is properly and timely filed in the manner provided
9 by R.S. 9:4811, ~~the persons~~ a person to whom a claim or privilege is granted by R.S.
10 9:4802 shall ~~within thirty days after the filing of a notice of termination of the work~~
11 file a statement of his claim and privilege and deliver to the owner, if his address is
12 given in the notice of contract, a copy of the statement of claim and privilege, no
13 later than:

14 (1) ~~File a statement of their claims or privilege.~~ Thirty days after the filing
15 of a notice of termination of the work.

16 (2) ~~Deliver to the owner a copy of the statement of claim or privilege. If the~~
17 ~~address of the owner is not given in the notice of contract, the claimant is not~~
18 ~~required to deliver a copy of his statement to the owner.~~ Six months after the
19 substantial completion or abandonment of the work, if a notice of termination is not
20 filed.

21 ~~B.C.~~ A general contractor to whom a privilege is granted by R.S. 9:4801 ~~of~~
22 ~~this Part~~, and whose privilege has been preserved in the manner provided by R.S.
23 9:4811, shall file a statement of his privilege ~~within sixty days after the filing of the~~
24 ~~notice of termination or substantial completion of the work.~~ no later than:

25 (1) Sixty days after the filing of a notice of termination of the work.

26 (2) Seven months after the substantial completion or abandonment of the
27 work, if a notice of termination is not filed.

28 C. ~~Those persons granted a claim and privilege by R.S. 9:4802 for work~~
29 ~~arising out of a general contract, notice of which is not filed, and other persons~~

1 ~~granted a privilege under R.S. 9:4801 or a claim and privilege under R.S. 9:4802~~
2 ~~shall file a statement of their respective claims and privileges within sixty days after:~~

3 ~~(1) The filing of a notice of termination of the work, or~~

4 ~~(2) The substantial completion or abandonment of the work, if a notice of~~
5 ~~termination is not filed.~~

6 ~~D.(1) Notwithstanding the other provisions of this Part, the time for filing~~
7 ~~a statement of claim or privilege to preserve the privilege granted by R.S. 9:4801(5)~~
8 ~~expires sixty days after the latter of:~~

9 ~~(a) The filing of a notice for termination of the work that the services giving~~
10 ~~rise to the privilege were rendered; or,~~

11 ~~(b) The substantial completion or abandonment of the work if a notice of~~
12 ~~termination is not filed. This privilege shall have no effect as to third persons~~
13 ~~acquiring rights in, to, or on the immovable before the statement of claim or~~
14 ~~privilege is filed.~~

15 ~~(2) Notwithstanding the provisions of this Part, the seller of movables sold~~
16 ~~for use or consumption in work on an immovable for residential purposes, if a notice~~
17 ~~of contract is not filed, shall file a statement of claim or privilege within seventy~~
18 ~~days after:~~

19 ~~(a) The filing of a notice of termination of the work, or~~

20 ~~(b) The substantial completion or abandonment of the work, if a notice of~~
21 ~~termination is not filed.~~

22 E.D. A notice of termination of the work:

23 (1) Shall ~~reasonably identify~~ contain a complete property description of the
24 immovable upon which the work was performed and the work to which it relates.

25 If the work is evidenced by notice of a contract, reference to the notice of contract,
26 together with its registry number or other appropriate recordation information and
27 as filed or recorded, together with the names of the parties to the as they appear in
28 the notice of contract, shall be deemed adequate identification of the immovable and
29 work.

1 (2) Shall be signed by the owner ~~or his representative~~, who contracted with
2 the contractor, ~~or, if~~ or by that owner's representative. ~~If the owner has conveyed~~
3 transferred his rights in the immovable to another person, ~~then it may also be signed~~
4 by the new owner, the notice of termination of the work may instead be signed by
5 the owner's successor or his representative.

6 (3) Shall certify ~~that~~ the occurrence of one or more of the following:

7 (a) The work has been substantially completed; ~~or,~~

8 (b) The work has been abandoned by the owner; ~~or,~~

9 (c) ~~A contractor~~ The general contractor is in default under the terms of the
10 contract.

11 (d) The contract with the general contractor has terminated.

12 (4) Shall be conclusive for purposes of this Part of the matters certified if it
13 is made in good faith by the owner, his representative, or his successor.

14 E. If the work has been substantially completed or has been abandoned by
15 the owner, the owner shall file a notice of termination of the work no later than ten
16 days after receipt of a request for its filing from the general contractor. If the owner
17 fails to do so, the general contractor may institute a summary proceeding against him
18 for a judgment decreeing that the work has been substantially completed or has been
19 abandoned by the owner. Provided that the judgment contains the information
20 required by Paragraph (D)(1) of this Section and identifies the owner, it shall have
21 the effect of a notice of termination of the work from the time of its filing in the
22 mortgage records.

23 F. A notice of termination ~~or substantial completion~~ may be filed from time
24 to time with respect to a specified ~~portion or~~ area of work an immovable. In that
25 case, the time for preserving privileges or claims as specified in Subsection A or ~~C~~
26 B of this Section shall commence with the filing of the notice of termination ~~or~~
27 ~~substantial completion~~ as to amounts owed and arising from the work done on that
28 ~~portion or~~ area of the work immovable described in the notice of termination. This
29 notice shall ~~identify the portion or~~ contain a complete property description of the

1 specified area of the ~~land~~ immovable and certify that the work performed on that
2 ~~portion of the land~~ area is substantially completed or has been abandoned. ~~Once the~~
3 ~~period for preserving claims and privileges has expired and no liens have been timely~~
4 ~~filed, the portion or area of work described in the notice of termination shall be free~~
5 ~~of the claims and privileges of those doing work on the area described in the notice~~
6 ~~of termination, as well as those doing work elsewhere on the immovable being~~
7 ~~improved.~~

8 G. A statement of a claim or privilege:

9 (1) Shall be in writing.

10 (2) Shall be signed by the person asserting the same or his representative.

11 (3) Shall ~~reasonably identify~~ contain a reasonable identification of the
12 immovable with respect to which the work was performed or movables or services
13 were supplied or rendered ~~and the owner thereof.~~

14 (4) Shall set forth the amount and nature of the obligation giving rise to the
15 claim or privilege and reasonably itemize the elements comprising it including the
16 person for whom or to whom the contract was performed, material supplied, or
17 services rendered. The provisions of this Paragraph shall not require a claimant to
18 attach copies of unpaid invoices unless the statement of claim or privilege
19 specifically states that the invoices are attached.

20 (5) Shall identify the owner who is liable for the claim under R.S. 9:4806(B),
21 but if that owner's interest in the immovable does not appear of record, the statement
22 of claim and privilege may instead identify the person who appears of record to own
23 the immovable.

24 ~~H. A work is substantially completed when:~~

25 (1) ~~The last work is performed on, or materials are delivered to the site of the~~
26 ~~immovable or to that portion or area with respect to which a notice of partial~~
27 ~~termination is filed; or~~

28 (2) ~~The owner accepts the improvement, possesses or occupies the~~
29 ~~immovable, or that portion or area of the immovable with respect to which a notice~~

1 ~~of partial termination is filed, although minor or inconsequential matters remain to~~
2 ~~be finished or minor defects or errors in the work are to be remedied.~~

3 ~~I. A work is abandoned by the owner if he terminates the work and notifies~~
4 ~~persons engaged in its performance that he no longer desires to continue it or he~~
5 ~~otherwise objectively and in good faith manifests the abandonment or discontinuance~~
6 ~~of the project.~~

7 H. A person granted a claim and privilege under R.S. 9:4802 may give to the
8 owner a notice expressly requesting the owner to notify that person of the substantial
9 completion or abandonment of the work or the filing of notice of termination of the
10 work. The notice shall state the person's mailing address and shall be given to the
11 owner no later than:

12 (1) The filing of a notice of termination of the work.

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

15 I. If a person granted a claim and privilege under R.S. 9:4802 has given to
16 an owner a notice complying with Subsection H of this Section, the owner shall
17 notify that person within ten days after the substantial completion or abandonment
18 of the work or the filing of notice of termination of the work. If the owner does not
19 do so and if the person fails to file a statement of claim or privilege within the period
20 provided by this Section, the failure shall not extinguish the person's claim against
21 the owner granted by R.S. 9:4802(A), and the claim shall remain enforceable against
22 the owner provided that an action for its enforcement is brought no later than one
23 year after the expiration of that period. Nevertheless, the privilege arising in favor
24 of the person under R.S. 9:4802(B) shall be extinguished by his failure to file a
25 timely statement of claim or privilege, regardless of whether the owner has failed to
26 give him notice when required under this Subsection.

27 ~~J. Before any person having a direct contractual relationship with a~~
28 ~~subcontractor, but no contractual relationship with the contractor, shall have a right~~
29 ~~of action against the contractor or surety on the bond furnished by the contractor, he~~

1 (b) Subsection A provides the general rule describing the action that a
2 Private Works Act claimant must take to preserve his claim and privilege and the
3 time within which this action must be taken. Under Subsection A, the claimant must
4 file a statement of his claim or privilege in the mortgage records no later than sixty
5 days after the filing of a notice of termination of the work, or, if no notice of
6 termination is filed, no later than sixty days after the substantial completion or
7 abandonment of the work. Substantial completion and abandonment are defined in
8 R.S. 9:4809. The words "no later than" are used in place of the word "within" in the
9 former provision to signal that the claimant need not defer filing until the
10 commencement of the delays for filing following substantial completion or
11 abandonment of the work. See *Paul Hyde, Inc. v. Richard*, 854 So. 2d 1000 (La.
12 App. 4th Cir. 2003). Subsection A is the default rule that applies under the Act if
13 neither Subsection B nor Subsection C applies. It is written to avoid the ambiguity
14 in former Subsection C discussed in *In re Whitaker Const. Co., Inc.*, 439 F.3d 212
15 (5th Cir. 2006).

16 (c) Subsection B, which corresponds to Subsection A of the former
17 provision, applies only where notice of contract was properly and timely filed and,
18 even then, applies only to those claimants entitled to a claim or privilege under R.S.
19 9:4802. If notice of contract was properly and timely filed, those claimants must file
20 a statement of claim or privilege no later than thirty days after the filing of a notice
21 of termination, or, if no notice of termination is filed, no later than six months after
22 the substantial completion or abandonment of the work. Within the same periods,
23 the claimant must deliver a copy of the statement of claim or privilege to the owner,
24 if the owner's address is given in the filed notice of contract. The thirty-day period
25 is consistent with prior law. The six-month period is new and is intended, in the
26 interest of stability of title to immovables, to alter the former rule that the period for
27 filing statements of claim or privilege in connection with a work for which notice of
28 contract had been filed did not commence to run until notice of termination was
29 filed. See *Thompson Tree & Spraying Service, Inc. v. White-Spinner Construction,*
30 *Inc.*, 68 So. 3d 1142 (La. App. 3d Cir 2011), writ denied 71 So. 3d 290 (La. 2011);
31 *Bernard Lumber Company, Inc. v. Lake Forest Construction Co., Inc.*, 572 So. 2d
32 178 (La. App. 1st Cir. 1991). It should be recognized, however, that the new
33 six-month period is by no means a lengthening of the period permitted for filing
34 statements of claim or privilege. It is, instead, the imposition of an outside deadline
35 where none previously existed. If Subsection B applies, a statement of claim or
36 privilege filed more than thirty days after the filing of notice of termination is
37 untimely. If Subsection B applies and no notice of termination is filed, the period
38 for filing statements of claim or privilege will nevertheless expire six months after
39 substantial completion or abandonment of the work, and a statement of claim or
40 privilege filed later than that will be untimely.

41 (d) At the time of its original enactment, former Subsection A (which
42 corresponds to present Subsection B) allowed a general contractor to file an untimely
43 notice of contract and still trigger the thirty-day filing period that applied to claims
44 and privileges arising under R.S. 9:4802. Indeed, the Comments to the former
45 provision suggested that, for this purpose, notice of contract and notice of
46 termination could be filed simultaneously. This ability to trigger the thirty-day filing
47 period by a tardy notice of contract was removed by a subsequent legislative
48 amendment. The 2019 revision continues former law by making Subsection B
49 applicable only when notice of contract has been timely filed. Thus, if notice of
50 contract is not filed or is untimely, the applicable filing period is the sixty-day period
51 provided under revised Subsection A. In similar fashion, the 2019 revision continues
52 the rule that the claimant is not required to deliver a copy of the statement of claim
53 or privilege to the owner in the absence of a timely filed notice of contract.

54 (e) Subsection C, which corresponds to Subsection B of the former
55 provision, provides the period within which general contractors must file statements

1 of privilege. Subsection C applies by its terms regardless of whether notice of
 2 contract is filed, but a general contractor under a contract for more than \$100,000
 3 will not be entitled to file a statement of privilege at all unless he has caused notice
 4 of contract to be timely filed. See R.S. 9:4811(D). As under former law, the general
 5 contractor ordinarily must file a statement of privilege no later than sixty days after
 6 the filing of a notice of termination. The contractor can shorten this period by
 7 acquiescing in the cancellation of the notice of contract. See R.S. 9:4832(A).
 8 Subsection C makes clear that the sixty-day period runs from the filing of notice of
 9 termination, not from substantial completion or abandonment of the work. See
 10 *Golden Nugget Lake Charles, L.L.C. v. W. G. Yates & Sons Construction Company*,
 11 850 F.3d 231 (5th Cir. 2017). If, however, no notice of termination is filed,
 12 Subsection C now requires that the contractor file his statement of privilege no later
 13 than seven months after the substantial completion or abandonment of the work. The
 14 sixty-day and seven-month periods are intended to grant the general contractor
 15 additional time to file following the expiration of the period that applies to claimants
 16 subject to Subsection B. As with the six-month period imposed by Subsection B, the
 17 seven-month period in Subsection C is not a lengthening of the period allowed to a
 18 general contractor to file his statement of privilege but rather represents the
 19 imposition of an outside deadline that applies if no notice of termination is filed.

20 (f) Subsection C applies only to general contractors, as defined in R.S.
 21 9:4807(B). Other contractors entitled to a privilege under R.S. 9:4801(1), as well as
 22 all persons entitled to a privilege under R.S. 9:4801(2), (3), (4) and (5), must file
 23 within the period prescribed by Subsection A. See *Evangeline Brokerage Co., Inc.*
 24 *v. Lewis*, 539 So. 2d 1311 (La. App. 3d Cir. 1989).

25 (g) Subsection D, which corresponds to former Subsection E, includes both
 26 stylistic and substantive changes in the former provision. A notice of termination,
 27 which is one of several documents that the Private Works Act requires or permits an
 28 owner to file, must contain a complete property description, rather than merely a
 29 reasonable identification, of the immovable. See R.S. 9:4810(3) and R.S. 9:4831(B)
 30 and (C). As revised, Subparagraph (D)(3)(c) implicitly recognizes that multiple
 31 contractors can be involved on a single work, and a default by only the general
 32 contractor should be a basis for filing a notice of termination. Subparagraph
 33 (D)(3)(d), which is new, allows a notice of termination when the contract with the
 34 general contractor terminates in the absence of default, such as a termination for
 35 convenience. The revision to Paragraph (D)(4) is discussed in the following
 36 Comment.

37 (h) Paragraph (D)(4) makes the owner's good faith the test of the validity of
 38 a notice of termination but does not attempt to specifically regulate the question of
 39 what happens if the notice is filed in bad faith. Because the filing periods of this
 40 Section do not expressly depend upon whether the notice of termination is filed in
 41 good faith, a notice of termination filed in bad faith should have effect if the rights
 42 of third persons (such as a person who acquires a mortgage after the apparent filing
 43 period has expired) are involved. At the same time, because a person ordinarily
 44 cannot assert his own misconduct as a defense, a notice of termination filed in bad
 45 faith should be ineffective as to the owner himself. Paragraph (D)(4) has been
 46 revised to provide that the conclusive presumption of correctness arising from the
 47 filing of a notice of termination is limited in its effect to the purposes of the Act
 48 itself. A unilateral statement made by an owner in a notice of termination that the
 49 general contractor defaulted, even if the statement is made in good faith, should not
 50 be given conclusive effect in litigation over that issue between the owner and general
 51 contractor.

52 (i) Subsection E is new. It provides a mechanism by which a general
 53 contractor can force an owner to file a notice of termination following substantial

1 completion or abandonment of the work in order to commence the running of the
2 thirty-day filing period under Subsection B.

3
4 (j) The changes made to Subsection F are intended to restore the substance
5 of the Subsection to its original meaning, while at the same time reversing the effect
6 of a subsequent legislative amendment. Subsection F permits the filing of a notice
7 of termination if work over a specific geographic area has been completed and the
8 parties wish to be certain that all Private Works Act claimants have been paid for
9 work performed on that geographic area. The filing of a notice of termination under
10 Subsection F triggers the running of the filing periods specified in Subsections A or
11 B as to amounts owed from the work done on the area of the immovable described
12 in the notice of termination. The filing of a notice of termination under Subsection
13 F will not, however, truncate the filing periods applicable to claims and privileges
14 arising from work elsewhere on the immovable. The 2019 revision reverses the
15 effect of a prior legislative change to Subsection F that purported to free the
16 described portion of the immovable from privileges of those claimants who
17 performed (or later perform) work elsewhere on the immovable. Those claimants
18 presumably performed or agreed to perform work in reliance upon the entire
19 immovable as security for their claims, and unfairness potentially results when they
20 are deprived without their consent of a portion - and perhaps the major portion - of
21 this security during the course of a work.

22 (k) Subsection G specifies the information that is required to be contained
23 in a claimant's statement of claim or privilege. It largely continues existing law,
24 including the rule that a statement of claim or privilege need contain only a
25 reasonable identification of the immovable rather than a complete property
26 description. A statement of the street address of the immovable without more is not
27 a sufficient identification. See R.S. 9:4831(B). There is no requirement that a
28 statement of claim or privilege be executed by authentic act, be acknowledged before
29 a notary, or take the form of a sworn affidavit. Paragraph (G)(5), which is new, is
30 intended to assist a claimant in reciting the name of the "owner" in his statement of
31 claim or privilege when the owner who is responsible for the claim (such as a lessee
32 under an unrecorded lease) does not have an interest that appears of record. Under
33 those circumstances, the statement of claim or privilege may instead identify the
34 person who appears of record to own the immovable. Naming such a person in the
35 statement of claim or privilege also increases the likelihood that persons searching
36 the mortgage records will be able to find the statement of claim or privilege through
37 reasonable efforts. Nevertheless, inclusion of the name of an owner who has no
38 responsibility for the claim, even when authorized by Subsection G, does not create
39 a privilege on that owner's interest in the immovable. See R.S. 9:4806(E).

40 The purpose of a statement of claim or privilege is to give notice to the owner
41 and contractor of the existence of the claim and to give notice to persons who may
42 deal with the owner that a privilege is claimed on the immovable. See *Mercantile*
43 *Nat. Bank of Dallas v. J. Thos. Driscoll, Inc.*, 195 So. 497 (La. 1940); *Simms Hardin*
44 *Co., LLC v. 3901 Ridgelake Drive, L.L.C.*, 119 So. 3d 58 (La. App. 5th Cir. 2013).
45 Technical defects in the notice should not defeat the claim or privilege as long as the
46 notice is adequate to serve the purposes intended.

47
48 (l) Subsections H and I, which replace former Subsections K and L, provide
49 a mechanism by which a claimant granted a claim and privilege under R.S. 9:4802
50 can request notice from the owner of the substantial completion or abandonment of
51 the work or of the filing of notice of termination of the work. Those events all
52 potentially start the running of the delays within which the claimant must file in
53 order to preserve his claim and privilege. The former provision allowed a claimant
54 to request notice, but the remedy that it provided (recovery of attorney fees without
55 preservation of the claimant's claim against the non-complying owner) was wholly
56 unsuited to address the harm the claimant might suffer if the owner failed to comply

1 with the request. See *Buck Town Contractors & Co. v. K-Belle Consultants, LLC*,
 2 216 So. 3d 981 (La. App. 4th Cir. 2016); *Byron Montz, Inc. v. Conco Construction,*
 3 *Inc.*, 824 So. 2d 498 (La. App. 4th Cir. 2002). Under revised Subsection I, if an
 4 owner does not comply with a claimant's request under Subsection H for notice of
 5 the substantial completion or abandonment of the work or of the filing of notice of
 6 termination of the work, the claimant's failure to file a timely statement of claim or
 7 privilege does not cause the loss of his claim against the owner under R.S.
 8 9:4802(A). Nevertheless, the claimant's privilege under R.S. 9:4802(B) will be
 9 extinguished by his failure to file. The claimant's rights against the contractor and
 10 surety will also be extinguished by the claimant's failure to file a statement of claim
 11 or privilege, unless the claimant preserves his rights against them by delivering to
 12 the contractor a timely statement of claim or privilege under R.S. 9:4823(B).

13 (m) The rule of former Paragraph (D)(1) that privileges arising under R.S.
 14 9:4801(5) and those securing a claim arising under R.S. 9:4802(A)(5) are not
 15 effective as to third persons until the time of filing of the statement of claim or
 16 privilege now appears in R.S. 9:4820(D).

17 (n) The requirement under former Paragraph (D)(2) that an unpaid seller of
 18 movables sold for use in a residential work deliver notice of nonpayment to the
 19 owner at least ten days before filing a statement of his claim or privilege has been
 20 eliminated, and the special seventy-day period previously allowed such a seller to
 21 file his statement of claim or privilege has also been suppressed in favor of the
 22 period that is applicable under Subsection A or B.

23 (o) The definitions of substantial completion and abandonment of a work,
 24 previously found in former Subsections H and I, have been moved without
 25 substantive change to R.S. 9:4809.

26 (p) Former Subsection J, which required a claimant not in privity of contract
 27 with a contractor to file a statement of claim or privilege as a prerequisite to an
 28 action against the contractor and his surety, was suppressed on account of its
 29 incompatibility with other provisions of the Private Works Act. See R.S. 9:4823(B).

30 (q) Former Subsection M has been redesignated as R.S. 9:4858.

31 §4823. Extinguishment of claims and privileges

32 A. A privilege provided by R.S. 9:4801, a claim against the owner and the
 33 privilege securing it provided by R.S. 9:4802, or a claim against the contractor
 34 provided by R.S. 9:4802 is extinguished if any of the following occurs:

35 (1) The claimant or holder of the privilege does not preserve it as required
 36 by R.S. 9:4822;~~or,~~

37 (2) The claimant or holder of the privilege does not institute an action against
 38 the owner for the enforcement of the claim or privilege within one year after filing
 39 the statement of claim or privilege to preserve it;~~or,~~

40 (3) The obligation ~~which~~ that it secures is extinguished.

1 B. ~~A~~ Notwithstanding Subsection A of this Section, a claim against a
2 contractor granted by R.S. 9:4802 is not extinguished by the failure to file a
3 statement of claim or privilege as required by R.S. 9:4822 if a statement of the claim
4 or privilege is delivered to the contractor within the period allowed for its filing by
5 R.S. 9:4822. The failure to file an action against the owner as required by ~~R.S.~~
6 ~~9:4823(A)(2)~~ Paragraph (A)(2) of this Section shall not extinguish a claim against
7 a contractor or his surety if an action for the enforcement of the claim is instituted
8 against the contractor or his surety ~~within~~ no later than one year after the expiration
9 of the time given by R.S. 9:4822 for filing the statement of claim or privilege to
10 preserve it.

11 C. The extinguishment of a claim or privilege arising under this Part shall
12 not affect other rights the claimant or privilege holder may have against the owner,
13 the contractor, or the surety.

14 * * *

15 E. A claim against the owner and the privilege securing it granted by this
16 Part are extinguished if a bond is filed by ~~the~~ a contractor or subcontractor as
17 provided by R.S. 9:4835.

18 F. In a concursus proceeding brought under R.S. 9:4841, the joinder of the
19 owner and a person who has a privilege or a claim against the owner, or the joinder
20 of the contractor or surety and a person who has a claim against the contractor,
21 constitutes the institution of an action for the enforcement of the claim or privilege
22 against the owner, contractor, or surety, as the case may be.

23 Comments - 2019

24 (a) This Section requires the timely filing of statements to preserve claims
25 and privileges arising under the Private Works Act and the institution of suits for
26 their enforcement. The effect of failing to take the required action results in the
27 extinguishment of those claims and privileges. Under Subsection A, action taken to
28 preserve the claim against the owner also prevents its extinguishment against the
29 contractor or surety. Providing for the extinguishment of rights against the
30 contractor and surety when the claim has been preserved against the owner would
31 be pointless in light of the owner's rights of indemnity from the contractor. See R.S.
32 9:4802(F).

33 (b) Paragraph (A)(1) should be read in conjunction with R.S. 9:4831(D),
34 which provides that a statement of claim or privilege identifying an immovable by

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 reference to a notice of contract that itself does not contain a reasonable
 2 identification of the immovable is insufficient to preserve the claimant's privilege
 3 against third persons but is nevertheless sufficient to preserve the claimant's rights
 4 against the owner, the contractor, and the surety. Of course, the claimant would still
 5 have to institute a timely action against the owner in accordance with Paragraph
 6 (A)(2) to prevent loss of the claim.

7 (c) The period allowed a claimant to institute an action against the owner
 8 under Paragraph (A)(2) runs from the date that he files his statement of claim or
 9 privilege in the mortgage records, not from the date on which the filing period
 10 expires.

11 (d) Subsection B provides that the extinction of the claim against the owner
 12 will not necessarily extinguish the statutory claim against the contractor, if the
 13 claimant delivers a statement of claim or privilege to the contractor within the period
 14 in which it should have been filed. Under those circumstances, which presuppose
 15 that no statement of claim or privilege is filed, the period allowed the claimant to
 16 bring suit against the contractor and surety is one year from the expiration of the
 17 filing period.

18 (e) Subsection C makes clear that the extinguishment of claims and
 19 privileges arising under the Private Works Act does not extinguish other rights that
 20 the claimant may have, such as contractual rights to payment. Thus, if a general
 21 contractor fails to preserve his privilege by filing a statement of privilege within the
 22 time provided by R.S. 9:4822(C), or if the general contractor forfeits his right to a
 23 privilege by failing to record notice of contract when required by R.S. 9:4811(D), the
 24 contractor nevertheless still has a contractual right to payment from the owner who
 25 engaged him. A claimant who fails to preserve his rights under the Private Works
 26 Act is not, however, entitled to recovery against the owner or contractor under a
 27 theory of unjust enrichment. See *JP Mack Industries LLC v. Mosaic Fertilizer, LLC*,
 28 970 F. Supp. 2d 516 (E.D. La. 2013).

29 (f) Although Subsections D and E refer to the filing of a surety bond, R.S.
 30 9:4835 permits, instead of a bond, the deposit of funds to secure payment of the
 31 claims. In light of the provisions of R.S. 9:4835, authorizing the clerk to cancel the
 32 privileges upon the giving of such security, the term "bond" in this Section should
 33 be construed to include not only a surety bond but also the other forms of security
 34 permitted to be given by R.S. 9:4835 in lieu of a bond. As revised, Subsection E
 35 provides that a bond or other security posted by either a contractor or a subcontractor
 36 relieves the owner of liability for the claim.

37 SUBPART E. FILING; CANCELLATION; PEREMPTION

38 §4831. Filing; place of filing; contents

39 A. The filing of a notice of contract, notice of termination, statement of a
 40 claim or privilege, affidavit, or notice of pendency of action required or permitted
 41 to be filed under the provisions of this Part is accomplished when it is filed for
 42 registry with the recorder of mortgages of the parish ~~in which the~~ of location of the
 43 immovable upon which work is to be or has been performed. The recorder of
 44 mortgages shall inscribe all such acts in the mortgage records.

1 B. For purposes of this Part, the recorder of mortgages includes the office of
2 ~~the clerk of court and ex officio recorder of mortgages.~~ Each notice of contract,
3 notice of termination of work, affidavit filed in accordance with R.S. 9:4820(C) or
4 4832(C), and other filing by an owner under this Part shall contain a complete
5 property description of the immovable upon which the work is to be or has been
6 performed. Each other filing under this Part shall contain either a complete property
7 description of the immovable or another reasonable identification of the immovable.
8 A statement of the name of the owner and street address or mailing address of the
9 immovable without more shall not be sufficient to meet the requirements of this
10 Subsection.

11 C. ~~Each filing made with the recorder of mortgages pursuant to this Part~~
12 ~~which contains a reference to immovable property shall contain a description of the~~
13 ~~property sufficient to clearly and permanently identify the property. A description~~
14 ~~which includes the lot and/or square and/or subdivision or township and range shall~~
15 ~~meet the requirement of this Subsection. Naming the street or mailing address~~
16 ~~without more shall not be sufficient to meet the requirements of this Subsection. If~~
17 the work is evidenced by a notice of contract that contains a complete property
18 description of the immovable, reference in any subsequent filing to the notice of
19 contract, together with its registry number or other appropriate recordation
20 information, shall be sufficient to meet the requirements of Subsection B of this
21 Section. If the work is evidenced by a notice of contract that contains either a
22 complete property description of the immovable or another reasonable identification
23 of the immovable, reference to the notice of contract, together with its registry
24 number or other appropriate recordation information, shall be deemed a reasonable
25 identification of the immovable in a statement of claim or privilege filed under this
26 Part.

27 D. Reference in a statement of claim or privilege to a notice of contract that
28 does not contain a reasonable identification of the immovable shall not alone be
29 sufficient to preserve the privilege of the claimant against a third person having or

1 acquiring an interest in the immovable but shall nevertheless be sufficient to preserve
 2 all rights of the claimant against the owner, the contractor, and his surety.

3 Comments - 2019

4 (a) Subsection A provides that all filings under the Private Works Act are to
 5 be made in the mortgage records of the parish in which the immovable is located.
 6 It makes the filing of the documents the significant time, rather than recordation.
 7 This is consistent with the law generally applicable to registry. See Civil Code
 8 Article 3347.

9 (b) Subsection B clarifies the degree of specificity of property descriptions
 10 required in filings made under the Private Works Act. All filings made by the
 11 owner, including notices of contract and notices of termination, must contain a
 12 complete property description, a term defined in R.S. 9:4810(3). Filings made by
 13 other persons, such as statements of claim or privilege filed by claimants, may
 14 contain a complete property description but are required to contain only a reasonable
 15 identification of the immovable. In neither case, however, is a mere street address
 16 sufficient. See *Tee It Up Golf, Inc. v. Bayou State Construction, LLC*, 30 So. 3d
 17 1159 (La. App. 3d Cir. 2010); *Boes Iron Works, Inc. v. Spartan Bldg. Corp.*, 648 So.
 18 2d 24 (La. App. 4th Cir. 1994); *Norman H. Voelkel Const., Inc. v. Recorder of*
 19 *Mortgages for East Baton Rouge Parish*, (La. App. 1st Cir. 2003). A description of
 20 the immovable as a designated lot in a properly platted subdivision would ordinarily
 21 be sufficient as both a complete property description and a reasonable identification,
 22 unless something less than the entire lot that is designated is intended.

23 (c) Subsection C broadens a principle that was previously applicable only to
 24 notices of termination under the express wording of the Act. Where a filed notice
 25 of contract describes an immovable, a subsequent filing can satisfy the requirement
 26 of describing or identifying the immovable by including a reference to the filed
 27 notice of contract. If the notice of contract contains a complete property description,
 28 this reference satisfies the requirements for either a complete property description
 29 or a reasonable identification in the subsequent filing. If, on the other hand, the filed
 30 notice of contract contains only a reasonable identification that does not qualify as
 31 a complete property description of the immovable, the reference in the subsequent
 32 filing will similarly constitute only a reasonable identification of the immovable.

33 (d) Subsection D is new. It provides that a statement of claim or privilege
 34 identifying an immovable by reference to a notice of contract that itself does not
 35 contain a reasonable identification of the immovable will be insufficient to preserve
 36 the claimant's privilege against third persons but will nevertheless suffice to preserve
 37 the claimant's rights against the owner, the contractor, and the surety. This rule is
 38 intended to prevent an owner from profiting for his own error in failing to describe
 39 the immovable properly in the notice of contract.

40 §4832. Cancellation of notice of contract

41 A. The recorder of mortgages shall cancel from his records a notice of
 42 contract upon written request of any person made more than thirty days after the
 43 filing of a notice of termination of work performed under the contract if both of the
 44 following conditions are satisfied:

1 (1) A statement of claim or privilege with respect to the work was not filed
2 ~~within~~ before expiration of the thirty day period;~~and.~~

3 * * *

4 B. If the request for cancellation of a notice of contract does not contain or
5 is not accompanied by the written concurrence or receipt of the contractor, but a
6 statement of claim or privilege was not filed ~~within~~ before expiration of the thirty
7 day period, the recorder of mortgages shall cancel the notice of contract as to all
8 claims and privileges except that of the contractor. The recorder of mortgages shall
9 completely cancel the notice of contract from his records upon written request of any
10 person if either of the following conditions is satisfied:

11 (1) The request is made more than sixty days after the filing of the notice of
12 termination and the contractor did not file a statement of his claim or privilege ~~within~~
13 ~~that time,~~ or before expiration of the sixty day period.

14 * * *

15 C. The recorder of mortgages shall immediately cancel a notice of contract
16 if both of the following occur:

17 (1) A request for cancellation of notice of contract signed by the owner and
18 contractor is filed.

19 (2) Within four business days after the filing of the request for cancellation,
20 an affidavit made by a qualified inspector is filed to the effect that he inspected the
21 immovable at a specified time subsequent to the filing of the request for cancellation
22 and that work had not then begun, as the beginning of work is defined by R.S.
23 9:4820.

24 D. A notice of contract cancelled in accordance with Subsection C of this
25 Section shall have no effect.

26 Comments - 2019

27 (a) Subsections A and B make no substantive change in the law. They
28 provide for cancellation of the notice of contract following the filing of a notice of
29 termination of the work. Erasure of a statement of claim or privilege is regulated by
30 R.S. 9:4833. It is implicit that if a statement of claim or privilege is timely filed but
31 later erased the notice of contract could also be cancelled because the records would
32 then not disclose any statement of claim or privilege filed within the applicable filing

1 period. The erasure or cancellation of a statement of claim or privilege eliminates the
2 statement from the records, and it should then be considered as having never been
3 filed for purposes of cancellation of the notice of contract under this Section.

4 (b) Subsection C incorporates the substance of former R.S. 9:4811(E), which
5 allowed prematurely or improvidently filed notices of contract to be cancelled if
6 work had not yet begun. The former provision contained an apparent error, however,
7 in requiring that the affidavit of the inspector recite that work had not commenced
8 as of a specified time subsequent to the filing of the notice of contract. As
9 Subsection C provides, the critical moment in time is when the request for
10 cancellation of the notice of contract is filed, rather than when the notice of contract
11 itself was filed. In order to prevent the effectiveness of a request for cancellation
12 from being in question for an inordinately long period, Subsection C adopts the
13 four-business-day limitation that applies to affidavits of no work filed for other
14 purposes.

15 (c) Subsection D provides that a notice of contract that is cancelled under
16 Subsection C has no effect, and R.S. 9:4820(E) provides that the date of filing of a
17 subsequent notice of contract is considered to be the date of filing of notice of
18 contract for purposes of R.S. 9:4820(A)(1). This does not necessarily mean,
19 however, that Private Works Act privileges will take effect as to third persons from
20 the date of filing of the second notice of contract. If, contrary to the factual
21 allegations of the affidavit filed to obtain cancellation of the first notice of contract
22 under Subsection C, work had in fact begun before the request was made for
23 cancellation of that contract, or if work in fact begins at any other time before the
24 filing of the second notice of contract, the date that work actually began will be the
25 date that Private Works Act privileges arising from the work are effective as to third
26 persons. See R.S. 9:4820(A)(2).

27 §4833. Request to cancel the inscription of claims and privileges; cancellation;
28 notice of pendency of action

29 A.(1) If a statement of claim or privilege is improperly filed or if the claim
30 or privilege preserved by the filing of a statement of claim or privilege is
31 extinguished, an owner or other interested person may require the person who ~~has~~
32 filed a the statement of the claim or privilege to give a written request for
33 cancellation in the manner provided by law directing the recorder of mortgages to
34 cancel the statement of claim or privilege from his records. ~~The request shall be~~
35 ~~delivered within ten days after a written request for it is received by the person filing~~
36 ~~the statement of claim or privilege.~~

37 (2) If a statement of claim or privilege identifies an owner who is not liable
38 for the claim under R.S. 9:4806(B), that owner or another interested person may
39 require the person who filed the statement of the claim or privilege to give a written
40 request for cancellation in the manner provided by law directing the recorder of
41 mortgages to cancel the statement of claim or privilege from his records insofar as

1 requirements of ~~Article 3752 of the~~ Code of Civil Procedure Article 3752, the notice
 2 of pendency of action shall contain ~~a reference to the notice of contract, if one is~~
 3 ~~filed, or a reference to the recorded statement of claim or privilege if a notice of~~
 4 ~~contract is not filed.~~ If the effect of recordation of a statement of claim or privilege
 5 has ceased for lack of timely filing of a notice of pendency of action, the recorder of
 6 mortgages upon receipt of a written signed application shall cancel the recordation
 7 of the statement of claim or privilege.

8 Comments - 2019

9 (a) Paragraph (A)(1) makes no change in the law. Many construction
 10 projects contemplate or are dependent upon financing arrangements, leases, or
 11 conveyances that are to be consummated shortly after completion of the work.
 12 Paragraph (A)(1) is designed to discourage the filing of a claim that is unjustified,
 13 late, or otherwise made without reasonable cause for believing it is valid in the hope
 14 that economic pressure may be placed upon the owner or contractor to extract a
 15 settlement or other payment as the price of a release.

16 (b) Paragraph (A)(2) is new. It provides a mechanism for partial cancellation
 17 of a statement of claim or privilege insofar as it purports to affect an owner who has
 18 no responsibility for the claim. An owner who is not responsible might be named
 19 improperly in a statement of claim or privilege for a variety of reasons, including the
 20 claimant's error of law or fact or even his bad faith. An owner who has no
 21 responsibility might be properly named in a statement of claim or privilege because
 22 the owner who does have responsibility has no interest of record in the immovable.
 23 See R.S. 9:4822(G)(5). Under either circumstance, Paragraph (A)(2) provides a
 24 mechanism for the owner who has no responsibility to obtain a cancellation of the
 25 statement of claim or privilege insofar as it affects him or his interest in the
 26 immovable. As Paragraph (A)(2) expressly provides, the cancellation does not affect
 27 the claimant's rights against any other owner or against the contractor or surety.

28 (c) A notice of pendency of action filed in accordance with Subsection E
 29 must contain a reference to the recorded statement of claim or privilege. The failure
 30 to file a timely notice of lis pendens does not extinguish the privilege as against the
 31 owner, nor does it extinguish personal claims against the owner. See *Triangle*
 32 *Pacific Corp. v. National Bldg. & Contracting Co., Inc.*, 652 So. 2d 552 (La. App.
 33 1st Cir. 1995); *C & J Contractors v. American Bank & Trust Co.*, 559 So. 2d 810
 34 (La. App. 1st Cir. 1990). The lack of a timely filed notice of pendency of action
 35 instead merely makes the privilege ineffective as to third persons. See, e.g., *First*
 36 *National Bank of Commerce v. de la Tour Contractors, Inc.*, 570 So. 2d 239 (La.
 37 App. 4th Cir. 1990). A third person's knowledge of the pendency of an action to
 38 which he is not a party does not obviate the need for a claimant to file a timely notice
 39 of pendency of the action. See *Triangle Pacific Corp.*, supra.

40 (d) The last sentence of Subsection E clarifies that, upon request, the
 41 recorder is required to cancel the inscription of a statement of claim or privilege if
 42 the claimant fails to file a timely notice of pendency of action. Neither an
 43 authorization for cancellation from the claimant nor a judgment is required when
 44 cancellation is requested under Subsection E.

1 §4834. Notice of contract; cessation of effect, reinscription

2 The effect of filing a notice of contract ceases five years after it is filed,
3 unless a written ~~request for~~ notice of its reinscription, in the manner provided for the
4 reinscription of mortgages, is properly and timely ~~made~~ filed by an interested person
5 ~~to~~ with the recorder of mortgages in whose office the notice of contract is filed. A
6 ~~request for~~ notice of reinscription may not be ~~made~~ filed after the effect of the filing
7 of the notice of the contract has ceased. The effect of reinscription shall cease five
8 years after the ~~request for~~ notice of reinscription is filed unless a subsequent notice
9 of reinscription is filed within that time.

10 Comments - 2019

11 This Section makes no change in the law. It has been revised to employ
12 terminology presently used with reference to reinscriptions and to clarify that
13 successive reinscriptions are permitted. This Section continues the rule that an
14 untimely notice of reinscription of a notice of contract is not permitted.

15 §4835. Filing of bond or other security; cancellation of statement of claim or
16 privilege or notice of pendency of action

17 A. If a statement of claim or privilege or a notice of pendency of action is
18 filed, any interested ~~party~~ person may deposit with the recorder of mortgages either
19 a bond of a lawful surety company authorized to do business in the state, cash, or
20 certified funds to guarantee payment of the obligation secured by the privilege or that
21 portion as may be lawfully due together with interest, costs, and attorney fees to
22 which the claimant may be entitled up to a total amount of one hundred twenty-five
23 percent of the principal amount of the claim as asserted in the statement of claim or
24 privilege or ~~such a suit~~ in the action. ~~A surety shall not have the benefit of division~~
25 ~~or discussion.~~

26 * * *

27 C. Any ~~party~~ person who files a bond or other security to guarantee payment
28 of an obligation secured by a privilege in accordance with the provisions of ~~R.S.~~
29 ~~9:4835(A)~~ Subsection A of this Section shall give notice of the filing to the owner
30 ~~of the immovable~~, the holder of the ~~lien~~ privilege, and the contractor ~~of the~~

1 improvements to the immovable by certified mail to the address of the immovable
2 or to the lienholder's address in the case of notice to the lienholder.

3 Comments - 2019

4 (a) This Section permits any interested person to post a surety bond in order
5 to obtain the cancellation of a statement of claim or privilege or of a subsequent
6 notice of pendency of action. Alternatively, this Section permits an interested person
7 to deposit (i.e. grant a security interest in) cash or certified funds for the same
8 purpose. See *Rimsky v. Currier*, 649 So. 2d 1248 (La. App. 2d Cir. 1995) (holding
9 that the delivery of a cash bond to the clerk of court causes a security interest in the
10 funds to attach and to be perfected by the clerk's possession of the funds). R.S.
11 9:4823(D) and (E) draw a distinction between the effect of a bond or other security
12 provided by an owner and that of a bond or other security provided by a contractor
13 or subcontractor. The former extinguishes only the privilege upon the owner's
14 interest in the immovable, while the latter extinguishes both the privilege and the
15 statutory liability imposed on the owner by R.S. 9:4802.

16 (b) The deletion of the statement in former Subsection A that a surety cannot
17 plead division or discussion is not intended to change the law. Under the present law
18 of suretyship, a surety does not have the right to plead division or discussion,
19 regardless of whether he is solidarily bound. See Civil Code Article 3045.

20 (c) Subsection B states the responsibility of the recorder and requires
21 notation of his approval of the formal requisites of the bond before it will have the
22 effect provided by R.S. 9:4823(D) and (E).

23 SUBPART F. ~~PROCEDURE FOR ENFORCEMENT;~~ DELIVERY OF
24 COMMUNICATIONS; ~~BURDEN OF PROOF OF DELIVERY OF MOVABLES~~

25 §4841. Enforcement of claims and privileges; concursus

26 A. After the period provided by R.S. 9:4822 for the filing of statements of
27 claims or privileges has expired, the owner or any other interested ~~party~~ person may
28 convoke a concursus and shall cite all persons who have preserved their claims
29 against the owner or their privileges on the immovable, ~~and shall cite the~~ to establish
30 the validity and rank of their claims and privileges. The owner, the contractor, and
31 the surety shall also be cited if they are not otherwise parties to ~~establish the validity~~
32 ~~and rank of their claims and privileges~~ the concursus.

33 B. The owner who convokes or is made a party to the concursus may deposit
34 into the registry of the court the amounts ~~owed by him~~ he owes to the contractor.

35 C. ~~The~~ Upon motion of the owner, the court shall ~~may by rule~~ order the other
36 parties to the ~~action~~ concursus to show cause why a judgment should not be entered
37 discharging and cancelling their claims and privileges or discharging the owner from

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 further responsibility to them. The ~~rule motion~~ shall be tried ~~and appealed separately~~
2 ~~from the main cause of action~~ as a summary proceeding and shall be limited to a
3 consideration of the following matters:

4 * * *

5 (3) Whether a notice of the contract and a bond for the work were properly
6 and timely filed as required by R.S. 9:4811 and ~~R.S. 9:4812~~.

7 * * *

8 D.(1) If the court determines that the owner has properly deposited all sums
9 ~~owed by him~~ he owes to the contractor; that the owner has complied with this Part
10 by properly and timely filing notice of a contract and bond as required by R.S.
11 9:4811 and ~~R.S. 9:4812~~; and that the bond complies with the requirements of this
12 Part, ~~or if it finds that any of the claims or privileges have not been preserved~~; it shall
13 render a judgment on the ~~rule motion~~ directing the ~~claims or privileges to be~~
14 ~~cancelled by the recorder~~ cancellation of all statements of claim or privilege and
15 declaring the owner discharged from further liability, ~~for such claims or~~ If the court
16 finds that any of the claims or privileges have not been preserved, it shall render a
17 judgment on the motion directing the cancellation of such claims or privileges and
18 declaring the owner discharged from further liability for such claims. The court may
19 also render judgment on the motion limiting the claims and privileges to the amounts
20 as may be owed by the owner or otherwise granting such relief to the owner as may
21 be proper.

22 (2) A suspensive or devolutive appeal may be taken as a matter of right from
23 an order or judgment issued under Paragraph (1) of this Subsection.

24 E.(1) The surety who convokes a concursus proceeding shall deposit into the
25 registry of the court an amount equal to the lesser of:

26 ~~(1)(a)~~ (a) The full amount of the bond; ~~or.~~

27 ~~(2)(b)~~ (b) One hundred and twenty-five percent of the total amount claimed by
28 persons who have filed a timely ~~statement~~ statements of claim or privilege for work
29 arising out of the contract for which the bond is given.

1 (d) Subsection E has been revised to eliminate the prior reference to a
2 judgment of default. In a concursus proceeding, issue need not be joined by default.
3 Code of Civil Procedure Article 4656. Instead, any claimant who does not answer
4 is given a second opportunity to do so and is estopped if he fails to avail himself of
5 this second opportunity. Code of Civil Procedure Article 4657; *Shell Oil Company*
6 *v. Minvielle*, 491 So. 2d 785 (La. App. 3d Cir. 1986). If a claimant fails to answer
7 after being made a party to a concursus under this Section, the surety may not file a
8 motion under Subsection E until expiration of the delay given to the claimant to
9 answer in an order issued by the court under Code of Civil Procedure Article 4657.

10 §4842. Delivery of ~~notice~~ communications or ~~other documents and materials;~~
11 ~~burden of proof~~

12 A. ~~A notice~~ Delivery of a communication or document required or permitted
13 by this Part to be given by this Part or delivered is accomplished when the
14 communication or document is received in accordance with R.S. 9:4843 by the
15 person to whom it is sent or when it is deemed to have been given or delivered in
16 accordance with R.S. 9:4844 or 4845. ~~or any document required or permitted to be~~
17 ~~delivered by this Part shall be deemed to have been given or delivered when it is~~
18 ~~delivered to the person entitled to receive it, or when the notice or document is~~
19 ~~properly deposited in the United States mail for delivery by certified or registered~~
20 ~~mail to that person. The mailing may be addressed to an owner, contractor, or surety~~
21 ~~at the address given in a notice of contract or attached bond filed in accordance with~~
22 ~~this Part, or to a claimant at the address given in the statement of claim or privilege~~
23 ~~filed by the claimant or a notice given by the claimant under the provisions of R.S.~~
24 ~~9:4822.~~

25 B. ~~Proof of delivery at the site of the immovable by a claimant asserting a~~
26 ~~claim or privilege under the provisions of R.S. 9:4801(3) or R.S. 9:4802(3) is prima~~
27 ~~facie evidence that the movables became component parts of the immovable, or were~~
28 ~~used on the immovable, or in machinery or equipment used at the site of the~~
29 ~~immovable in performing the work.~~

30 Comments - 2019

31 (a) This Section and those that follow provide the means of giving or
32 delivering communications under the Private Works Act. It is the intent of these
33 Sections to allow use of modern methods of delivery while at the same time fostering
34 the reliability of communications and preserving the ability of a party to establish
35 that a communication has been effectively delivered. This Section lays the
36 foundation for those that follow: A communication is delivered when it is actually

1 received, as provided in R.S. 9:4843, or when it is deemed given or delivered in
2 accordance with R.S. 9:4844 or 4845.

3 (b) As this Section reflects, the words "give" and "deliver" are used
4 synonymously with respect to communications prescribed by the various provisions
5 of the Act, and the use of neither term is intended to imply a more exacting standard
6 of communicating with the intended recipient. The term "communication" includes
7 a notice.

8 §4843. Receipt of communications or documents

9 A communication or document is received when it comes into the possession
10 of the person to whom it is sent or of a person authorized by him to receive it.

11 Comments - 2019

12 (a) This Section is based upon Civil Code Article 1938, which provides that,
13 among other methods of delivery, a written revocation, rejection, or acceptance of
14 an offer is received when it comes into the possession of the addressee or of a person
15 authorized by him to receive it. This Section restates one of the methods of delivery
16 permitted by former R.S. 9:4842(A).

17 (b) This Section includes a temporal element by indicating that a
18 communication given under this Section is received at the moment it comes into the
19 recipient's possession, not at the earlier point in time at which it was transmitted or
20 dispatched. The following two Sections provide the means of delivering a
21 communication that will be deemed given at the time of transmission or dispatch.

22 §4844. Delivery by mail or commercial courier

23 A. A communication or document required or permitted by this Part to be
24 given or delivered shall be deemed to have been given or delivered when it is
25 properly deposited in the United States mail for delivery to the intended recipient by
26 certified or registered mail or by other method of delivery for which the United
27 States Postal Service registers and tracks the communication or document.

28 B. A communication or document required or permitted by this Part to be
29 given or delivered shall be deemed to have been given or delivered at the time that
30 it is properly deposited with a commercial courier for delivery to the intended
31 recipient, provided that the communication or document is received by the intended
32 recipient within a reasonable time after such deposit.

33 C. A communication or document may be addressed to an owner, contractor,
34 or surety at the address given in a notice of contract or attached bond filed in
35 accordance with this Part, or to a claimant at the address given in the statement of
36 claim or privilege filed by the claimant under the provisions of this Part.

1 Alternatively, a communication or document may be addressed to an owner,
2 contractor, surety, or claimant at the intended recipient's address designated as an
3 address for notice in any previous communication given by the intended recipient to
4 the sender with respect to the work.

5 D. If an address for an owner, contractor, or surety is not given in a filed
6 notice of contract or attached bond, and no address for notice has been designated
7 by the owner, contractor, or surety in a previous communication to the sender with
8 respect to the work, the communication or document may be addressed to the owner
9 or contractor at the address of the place of business through which the contract
10 between the owner and contractor was made, or to the surety at the address of the
11 office through which the bond was issued, or at any other place held out by the
12 owner, contractor, or surety as the place for receipt of communications related to the
13 work.

14 E. If an address for a claimant is not given in a statement of claim or
15 privilege, and no address for notice has been designated by the claimant in a previous
16 communication to the sender with respect to the work, the communication or
17 document may be addressed to the claimant at his place of business through which
18 the contract with the claimant was made concerning the provision of labor, services,
19 material, or equipment with respect to the work or at any other place held out by the
20 claimant as the place for receipt of communications related to the work.

21 F. As an alternative to any other address permitted by this Section, a
22 communication or document may be addressed to a juridical person that is
23 incorporated, formed, or organized under the laws of this state, or that has registered
24 or obtained a certificate of authority to do business in this state, at the address of the
25 person's registered office in Louisiana or the address of its principal office, principal
26 place of business, or principal business establishment in Louisiana, in each case as
27 reflected on the records of the Louisiana secretary of state.

28 Comments - 2019

29 (a) Subsection A provides that a communication is considered to have been
30 given at the time it is properly deposited in the United States mail for delivery by

1 registered or certified mail. To that extent, Subsection A reproduces a portion of
 2 former R.S. 9:4842(A). Subsection A, however, also permits use of any other
 3 present or future method of delivery offered by the United States Postal Service, so
 4 long as the method includes registry and tracking of the communication or document
 5 to be delivered. With any type of mailing permitted by Subsection A, the
 6 communication is deemed given at the moment it is properly deposited with the
 7 United States Postal Service, and the sender is not required to prove that the intended
 8 recipient actually received the communication.

9 (b) Subsection A does not preclude delivery of a communication by
 10 first-class mail or by another type of mail delivery that does not include registry and
 11 tracking. A communication sent in that manner, however, does not satisfy the
 12 requirements of Subsection A and accordingly is not deemed given at the moment
 13 of deposit with the United States Postal Service. Instead, the sender has the burden
 14 of proving actual receipt, and the communication is considered given only at the
 15 moment of actual receipt, as provided in R.S. 9:4843.

16 (c) Subsection B provides that a communication sent through a commercial
 17 courier is deemed to have been given at the time that it is properly deposited with the
 18 commercial courier for delivery to the intended recipient, but only if the
 19 communication is actually received by the intended recipient within a reasonable
 20 time. Of course, actual receipt itself constitutes effective notice under R.S. 9:4843,
 21 regardless of whether the delivery is made by a commercial courier or someone else.
 22 The benefit to be derived from using a commercial courier to make delivery under
 23 Subsection B is one of timing: the communication is deemed given at the moment
 24 of deposit with the commercial courier, provided that it is actually received within
 25 a reasonable period of time. The term "commercial courier" is defined in R.S.
 26 9:4810.

27 (d) Subsection C prescribes the address to which a communication ordinarily
 28 must be sent under this Section. The baseline rule is that the communication should
 29 be sent to the address used by the recipient in a filing made under the Private Works
 30 Act, such as a notice of contract or statement of claim or privilege. This is
 31 essentially the same rule previously expressed in former R.S. 9:4842(A).
 32 Alternatively, if the intended recipient has specifically designated a notice address
 33 in a prior communication it gave with respect to the same work, a communication
 34 may be sent to it at that address.

35 (e) Subsections D and E provide addresses that may be used only if no
 36 address is available under Subsection C. The formulation used in those Subsections
 37 is patterned after R.S. 10:1-201(26).

38 (f) Subsection F provides "safe harbor" addresses that may always be used
 39 for sending communications to a juridical person that is registered with the Louisiana
 40 secretary of state, regardless of the availability of any other address.

41 (g) The time allowed for a response to a request under R.S. 9:4805(A) for
 42 a statement of amounts owed runs from the date of the recipient's actual receipt of
 43 the request, rather than from the time the request is deemed given under this Section.
 44 See R.S. 9:4805(B).

45 §4845. Delivery by electronic means

46 A communication or document required or permitted by this Part to be given
 47 or delivered shall be deemed to have been given or delivered when it is delivered by
 48 electronic means to a recipient who has consented to that method of delivery of

1 communications or documents related to the work. Delivery by electronic means is
2 accomplished when any of the following occurs:

3 (1) The communication or document is sent by facsimile transmission to a
4 telecopier number at which the recipient has consented to receive communications
5 or documents related to the work, provided that the sender receives a facsimile
6 confirmation of receipt.

7 (2) The communication or document is delivered to an electronic mail
8 address at which the recipient has consented to receive communications or
9 documents related to the work, provided that the sender receives an electronic
10 confirmation of receipt.

11 (3) The communication or document enters an electronic information
12 processing system designated or used by the recipient for purposes of receiving
13 communications or documents related to the work, and the communication or
14 document is deemed to have been received by the recipient in accordance with R.S.
15 9:2615.

16 Comments - 2019

17 (a) This Section is new. It permits communications to be delivered
18 electronically by facsimile transmission or electronic mail and, in Paragraph (3),
19 recognizes all forms of electronic communication that are permitted under the
20 Louisiana Uniform Electronic Transactions Act, R.S. 9:2601 et seq. Paragraphs (1)
21 and (2) of this Section supplement the Louisiana Uniform Electronic Transactions
22 Act and are not intended as a limitation on the effectiveness of notices made in
23 accordance with that Act.

24 (b) Both this Section and the Louisiana Uniform Electronic Transactions Act
25 require the consent of the parties as a condition to the use of electronic
26 communications. Consent may, however, be inferred from the context and
27 surrounding circumstances, including the parties' conduct. See R.S. 9:2605(B)(2).

28 (c) Under the Louisiana Uniform Electronic Transactions Act, an electronic
29 communication is received when it reaches the intended recipient's designated
30 system, regardless of whether he is aware of its receipt or whether he ever retrieves
31 or reads it. See *In re Tillman*, 187 So. 3d 445 (La. 2016). Similarly, this Section
32 does not condition the effectiveness of an electronic communication on the intended
33 recipient's knowledge of its receipt or on his actions in reading it.

34 §4846. Proof of delivery of movables; prima facie evidence

35 Proof of delivery of movables at the site of the immovable by a claimant
36 asserting a claim or privilege under R.S. 9:4801(3) or 4802(A)(3) is prima facie

1 evidence that the movables became component parts of the immovable, or were used
2 on the immovable, or in machinery or equipment used at the site of the immovable
3 in performing the work.

4 Comments - 2019

5 The Section is new, but it carries forward without substantive change a
6 presumption previously provided in former R.S. 9:4842(B). The presumption is
7 rebuttable by a showing that the movables were not actually incorporated into the
8 immovable as its component parts or used or consumed at the site. See *Parish*
9 *Concrete, Inc. v. Fritz Culver, Inc.*, 399 So. 2d 694 (La. App. 1st Cir. 1981).

10 * * *

11 §4852. Notice

12 A. Prior to or at the time of entering into a contract for residential home
13 improvements under the provision of this Subpart, the contractor shall deliver to the
14 owner or his authorized agent, for such owner's or agent's signature, written notice
15 in substantially the following form:

16 NOTICE OF LIEN RIGHTS

17 Delivered this _____ day of _____, 20___, by _____,
18 Contractor.

19 I, ~~the undersigned owner of residential property located at _____ (street~~
20 ~~address) in the city of _____, parish of _____,~~
21 ~~Louisiana, acknowledge that the abovenamed contractor has delivered this notice to~~
22 ~~me, the receipt of which is accepted, signifying my understanding that said~~
23 ~~contractor is about to begin improving my residential property according to the terms~~
24 ~~and conditions of a contract, and that in accordance with the provisions of law in Part~~
25 ~~I of Chapter 2 of Code Title XXI of Title 9 of the Louisiana Revised Statutes of~~
26 ~~1950, R.S. 9:4801, et seq.:~~

27 ~~(1) A right to file a lien against my property and improvements is granted to~~
28 ~~every contractor, subcontractor, architect, engineer, surveyor, mechanic, cartman,~~
29 ~~truckman, workman, laborer, or furnisher of material, machinery or fixtures, who~~
30 ~~performs work or furnishes material for the improvement or repair of my property,~~
31 ~~for the payment in principal and interest of such work or labor performed, or the~~

1 ~~materials, machinery or fixtures furnished, and for the cost of recording such~~
2 ~~privilege.~~

3 ~~(2) That when a contract is unwritten and/or unrecorded, or a bond is not~~
4 ~~required or is insufficient or unrecorded, or the surety therefor is not proper or~~
5 ~~solvent, I, as owner, shall be liable to such subcontractors, materialmen, suppliers or~~
6 ~~laborers for any unpaid amounts due them pursuant to their timely filed claims to the~~
7 ~~same extent as is the hereinabove designated contractor.~~

8 ~~(3) That the lien rights granted herein can be enforced against my property~~
9 ~~even though the contractor has been paid in full if said contractor has not paid the~~
10 ~~persons who furnished the labor or materials for the improvement.~~

11 ~~(4) That I may require a written contract, to be recorded, and a bond with~~
12 ~~sufficient surety to be furnished and recorded by the contractor in an amount~~
13 ~~sufficient to cover the cost of such improvements, thereby relieving me, as owner,~~
14 ~~and my property, of liability for any unpaid sums remaining due and owing after~~
15 ~~completion to subcontractors, journeymen, cartmen, workmen, laborers, mechanics,~~
16 ~~furnishers of material or any other persons furnishing labor, skill, or material on the~~
17 ~~said work who record and serve their claims in accordance with the requirements of~~
18 ~~law.~~

19 I have read the above statement and fully understand its contents.

20 You are having work done on your home. Under Louisiana law, all those who
21 work on your home, including the contractor, any subcontractors, and their
22 employees, as well as all those who supply materials or equipment for the work, can
23 file a lien against your home if they are not paid. They can also recover from you
24 personally the amounts they are owed. This can occur even if you pay the contractor
25 all amounts that you agreed to pay for the work.

26 You might protect yourself if you do one of the following:

27 (a) Before the work begins, have the contractor supply you with a signed
28 contract and bond and make sure these are properly recorded in the parish mortgage
29 records.

1 (b) Do not pay the contractor unless you are sure that all those who worked
2 on your home or supplied materials or equipment have been paid in full. To do this,
3 you might want to require the contractor to give you written lien waivers signed by
4 all those who worked on your home or supplied materials or equipment,
5 acknowledging that they have been paid.

6 If you have further questions, contact a lawyer.

7 By signing below, you acknowledge that you have been provided with this
8 notice.

9 _____
10 Owner or Agent
11 _____
12 Date

13 * * *

14 Section 2. Civil Code Articles 3249, 3267, 3269, and 3274 are hereby amended and
15 reenacted to read as follows:

16 Art. 3249. Special privileges on immovables

17 Creditors who have a privilege on immovables; are:

18 ~~1.~~(1) The vendor on the estate by him sold, for the payment of the price or
19 so much of it as is unpaid, whether it was sold on or without a credit.

20 ~~2.~~(2) ~~Architects, undertakers, bricklayers, painters, master builders,~~
21 ~~contractors, subcontractors, journeymen, laborers, cartmen and other workmen~~
22 ~~employed in constructing, rebuilding or repairing houses, buildings, or making other~~
23 ~~works.~~ Those who are granted special privileges on immovables by legislation.

24 ~~3.~~ ~~Those who have supplied the owner or other person employed by the~~
25 ~~owner, his agent or subcontractor, with materials of any kind for the construction or~~
26 ~~repair of an edifice or other work, when such materials have been used in the~~
27 ~~erection or repair of such houses or other works.~~

28 ~~The above named parties shall have a lien and privilege upon the building,~~
29 ~~improvement or other work erected, and upon the lot of ground not exceeding one~~
30 ~~acre, upon which the building, improvement or other work shall be erected;~~
31 ~~provided, that such lot of ground belongs to the person having such building,~~

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 improvement or other work erected; and if such building, improvement or other work
2 is caused to be erected by a lessee of the lot of ground, in that case the privilege shall
3 exist only against the lease and shall not affect the owner.

4 ~~4. Those who have worked by the job in the manner directed by the law, or~~
5 ~~by the regulations of the police, in making or repairing the levees, bridges, ditches~~
6 ~~and roads of a proprietor, on the land over which levees, bridges and roads have been~~
7 ~~made or repaired.~~

8 * * *

9 Art. 3267. Special privileges on immovables and other privileges

10 If the ~~movables~~ immovables of the debtor are subject to ~~the vendor's~~
11 ~~privilege, vendor's privileges~~ or if there be a house or other work subjected to the
12 ~~privilege of the workmen who have constructed or repaired it, or of the individuals~~
13 ~~who furnished the materials~~ other special privileges, the ~~vendor, workmen and~~
14 ~~furnishers of materials,~~ vendors and creditors having other special privileges shall
15 be paid from the price of the object affected in their favor, in preference to other
16 privileged debts of the debtor, even funeral charges, except the charges for affixing
17 seals, making inventories, and others which may have been necessary to procure the
18 sale of the thing.

19 Art. 3269. Order of payment out of immovables; distribution of loss among
20 mortgage creditors

21 With the exception of special privileges, ~~which~~ that exist on immovables in
22 favor of ~~the vendor, of workmen and furnishers of materials~~ vendors and other
23 creditors, as declared above, the debts privileged on the movables and immovables
24 generally; ought to be paid, if the movables are insufficient, out of the product of the
25 immovables belonging to the debtor, in preference to all other privileged and
26 mortgage creditors.

27 The loss which may then result from their payment must be borne by the
28 creditor whose mortgage is the least ancient, and so in succession, ascending

1 according to the order of the mortgages, or by pro rata contributions where two or
2 more mortgages have the same date.

3 * * *

4 Art. 3274. Time and place of recordation; effectiveness

5 No privilege shall have effect against third persons, unless recorded in the
6 manner required by law in the parish where the property to be affected is situated.
7 It shall confer no preference on the creditor who holds it, over creditors who have
8 acquired a mortgage, unless the act or other evidence of the debt is recorded within
9 seven days from the date of the act or obligation of indebtedness when the registry
10 is required to be made in the parish where the act was passed or the indebtedness
11 originated and within fifteen days, if the registry is required to be made in any other
12 parish of this State. It shall, however, have effect against all parties from date of
13 registry.

14 The provisions of this Article are subject to exceptions provided by
15 legislation.

16 Section 3. Civil Code Articles 2772, 2773, 2774, 2775, 2776, 3268, and 3272 and
17 R.S. 9:4802(G) and 4811(E) are hereby repealed in their entirety.

18 Section 4. The Louisiana State Law Institute is hereby directed to transfer and
19 redesignate R.S. 9:4814, 4815, and 4822(M) as Subpart H of Part I of Chapter 2 of Code
20 Title XXI of Title 9 of the Louisiana Revised Statutes of 1950, entitled:
21 MISAPPLICATION OF PROCEEDS; RETAINAGE. This redesignation is neither an
22 amendment to nor a reenactment of these Sections.

23 Section 5. The existing Comments to R.S. 9:4801 through 4842 are superseded by
24 the Comments appearing beneath those Sections in this Act. The Louisiana State Law
25 Institute is hereby directed to remove the existing Comments and to print only the Comments
26 appearing in this Act.

27 Section 6. Except as otherwise provided in Sections 7 through 9, this Act shall be
28 effective on January 1, 2020, and shall apply to all works begun on or after that date, other
29 than those works for which notice of contract is filed in accordance with R.S. 9:4811 prior

1 to that date. For purposes of this Section, a work is begun as provided in R.S. 9:4820(A)(2),
2 as amended by this Act.

3 Section 7. The following shall apply to each work for which a notice of contract is
4 filed before January 1, 2020, whether the filing occurred before or occurs after the enactment
5 of this Act:

6 (A) If notice of termination is filed before January 1, 2020, then each person granted
7 a privilege under R.S. 9:4801 or a claim and privilege under R.S. 9:4802 with respect to the
8 work shall file a statement of claim or privilege within the time provided by R.S. 9:4822, as
9 it existed immediately prior to the enactment of this Act.

10 (B) If no notice of termination is filed before January 1, 2020, but the work is
11 substantially completed or abandoned before that date, then each person granted a privilege
12 under R.S. 9:4801 or a claim and privilege under R.S. 9:4802 with respect to the work shall
13 file a statement of claim or privilege within the time provided by R.S. 9:4822, as it existed
14 immediately prior to the enactment of this Act; provided, however, that, even if no notice
15 of termination is filed, the general contractor shall in no event file a statement of privilege
16 later than July 31, 2020, and other persons granted a privilege under R.S. 9:4801 or a claim
17 and privilege under R.S. 9:4802 shall in no event file a statement of claim or privilege later
18 than June 30, 2020.

19 (C) If no notice of termination is filed before January 1, 2020, and the work is
20 substantially completed or abandoned on or after that date, then each person granted a
21 privilege under R.S. 9:4801 or a claim and privilege under R.S. 9:4802 with respect to the
22 work shall file a statement of claim or privilege within the time provided by R.S. 9:4822, as
23 amended by this Act.

24 (D) The failure of a person granted a privilege under R.S. 9:4801 or a claim and
25 privilege under R.S. 9:4802 to file a statement of claim or privilege before expiration of the
26 applicable time provided in this Section shall extinguish the person's claim and privilege.

27 Section 8. The amendments to R.S. 9:4821 shall be applied retroactively to all
28 works, including those begun, and those for which notice of contract was filed, prior to

1 January 1, 2020, except to the extent such application would cause the divestiture of vested
2 rights.

3 Section 9. The amendments to R.S. 9:4833 shall apply retroactively to all works,
4 including those begun, and those for which notice of contract was filed, prior to January 1,
5 2020.

6 Section 10. This Act does not affect an action, case, or proceeding commenced
7 before January 1, 2020.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 203 Engrossed

2019 Regular Session

Gregory Miller

Abstract: Provides relative to privileges on immovables.

Present 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.

Proposed law retains present law but makes changes in terminology.

Present 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. Present 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.

Proposed law retains present law but 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. Proposed law also makes changes in terminology and other minor semantic changes.

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

Proposed law retains present law but 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. Proposed 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.

Present 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)). Proposed law (R.S. 9:4804) redesignates present law and makes changes in terminology. Proposed 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.

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

Proposed law retains present law but adds usufructuaries 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. Proposed 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.

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

Proposed law changes present law by making express a choice of law rule that was previously implicit under the Private Works Act, removing the requirement of the filing of a bond with the notice of contract, and deleting a prior legislative amendment concerning preliminary site work that was performed by the contractor engaged to construct the building.

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

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

Present law (R.S. 9:4811(A)(2) and (B)) requires the notice of contract to contain the legal property description of the immovable and provides that the improper identification of the immovable constitutes prima facie evidence of actual prejudice.

Proposed law changes present law by requiring a complete property description of the immovable and providing that the improper or insufficient description of the immovable constitutes prima facie evidence of actual prejudice.

Present law (R.S. 9:4811(D)) provides that if the stipulated or estimated price of the work exceeds \$25,000, a notice of contract must be filed by the contractor in order for him to assert a privilege under present law (R.S. 9:4801).

Proposed 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. Proposed 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.

Present 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.

Proposed law retains present law but additionally provides that if the stipulated or estimated price of the work exceeds \$100,000, the bond must be issued by a surety company licensed to do business in Louisiana.

Present law (R.S. 9:4812(B)) sets forth the amount of the bond that must be furnished based on tiered percentages of the stipulated or estimated price of the work.

Proposed law deletes the tiered-percentage scheme provided by present law and instead provides that in all cases, the amount of the bond that is furnished must be at least 100% of the stipulated or estimated price of the work.

Present law (R.S. 9:4812(E)) sets forth the conditions that are deemed to be included in a bond that complies with these requirements and provides that a surety who has not consented

to extensions of time has the right of indemnification as provided by Civil Code Article 3057.

Proposed law deletes the reference in present law to the right of the surety to indemnification under former Civil Code Article 3057 and also makes minor semantic changes.

Present 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.

Proposed law retains present law but 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.

Present law (R.S. 9:4820(A)) provides for the effectiveness of privileges that arise under the Private Works Act. Present 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.

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

Present 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.

Proposed law retains present law but clarifies that this provision applies only in the event that notice of contract was not filed. Proposed 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.

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

Proposed law changes present law by requiring 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. Proposed law also uses 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.

Proposed 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.

Proposed 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.

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

Proposed law changes present law by limiting 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.

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

Proposed 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.

Present law (R.S. 9:4822(A) through (D)) sets forth the time periods within which claimants must file their statements of claim and privilege.

Proposed law (R.S. 9:4822(A) through (C)) amends present law and 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. Proposed law further 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.

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

Proposed law (R.S. 9:4822(D)) 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. Proposed law also clarifies that a notice of termination made in good faith is only conclusive for purposes of the Private Works Act.

Proposed law (R.S. 9:4822(E)) permits the general contractor to request that the owner file a notice of termination of the work within ten 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.

Present law (R.S. 9:4822(F)) provides for the filing of a notice of termination or substantial completion with respect to a specified portion or area of work.

Proposed law amends present law to provide 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.

Present law (R.S. 9:4822(G)) sets forth the required contents of a statement of claim or privilege.

Proposed law retains present law but 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.

Present law (R.S. 9:4822(H) and (I)) defines the circumstances under which a work is substantially completed or abandoned. Proposed law (R.S. 9:4809) redesignates present law.

Present law (R.S. 9:4822(J)) requires 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.

Proposed law deletes present law.

Present law (R.S. 9:4822(K) and (L)) 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 within three days of the filing of notice of termination of the work or the substantial completion or abandonment of the work.

Proposed law (R.S. 9:4822(H) and (I)) retains present law but 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 ten days. Proposed 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.

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

Proposed law retains present law but 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.

Present 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.

Proposed law changes present law by requiring notices of contract, notices of termination, certain affidavits, and other filings by an owner to contain a complete property description. Proposed law further provides that other filings must 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.

Present law (R.S. 9:4832) sets forth the circumstances under which the recorder of mortgages must cancel a notice of contract.

Proposed law retains present law and also 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.

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

Proposed law retains present law and also 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. Proposed 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.

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

Proposed law retains present law but makes minor semantic changes and other clarifications.

Present 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.

Proposed law removes the statement under present 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.

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

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

Present law (R.S. 9:4842) provides for the delivery of a notice or document required to be given under the Private Works Act. Present law further 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.

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

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

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

Proposed 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.

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

Present law (R.S. 9:4852) provides for the notice that must be given by the contractor to the owner in connection with residential home improvements.

Proposed law amends present law to clarify its meaning and improve its understandability.

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

Proposed law repeals present law.

Present law (C.C. Art. 3249) provides that vendors, architects, contractors, subcontractors, other laborers, and suppliers of materials, as well as repairers of levees, bridges, ditches, and roads, are entitled to a privilege on immovables.

Proposed law amends present law to provide that vendors and those who are granted special privileges by legislation have a privilege on immovables.

Present 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.

Proposed law retains present law but replaces "workmen and furnishers of materials" with "creditors having other special privileges".

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

Proposed law repeals present law.

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

Proposed law repeals present law.

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

Proposed law retains present law but recognizes certain exceptions provided by legislation.

Present 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. Present law further provides for the payment of civil penalties, attorney fees, and court costs.

Proposed law redesignates present law.

Present 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. Present 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.

Proposed law redesignates present law.

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

Proposed law redesignates present law.

(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(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 Louisiana 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, 2773, 2774, 2775, 2776, 3268, and 3272 and R.S. 9:4802(G) and 4811(E); Redesignates R.S. 9:4814, 4815, and 4822(M))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Provide a lessor 30 days, rather than 20 days, to deliver notice in order to claim a privilege for rents that accrued prior to the notice being given.
2. Delete a provision that would allow a seller who sells movables to a subcontractor to deliver notice on only one occasion.
3. Delete proposed law relative to requests for a statement of amounts owed.