

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, 4805, 4809, 4810, 4813(F), 4832(C)
11 and (D), 4843, 4844, 4845, and 4846, 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, 4805, 4809, 4810,
17 4813(F), 4832(C) and (D), 4843, 4844, 4845, and 4846 are hereby enacted to read as
18 follows:

19 §4801. Improvement of immovable by owner; privileges securing the improvement

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

22 * * *

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

1 seller, the distinction is nevertheless relevant in determining the rights and
2 obligations of that person under the Act. The distinction is also important in that a
3 seller to a contractor is given rights under R.S. 9:4802 but a seller to another seller
4 is not.

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

18 (h) Under Paragraph (3), electricity and other sources of energy are
19 movables. See A.N. Yiannopoulos, 2 La. Civ. L. Treatise, Property §7:46 (5th ed.)
20 (stating that "energies are things in Louisiana, protected by the laws applicable to
21 movable property"). See also *Sommers v. Secretary, Dept. of Revenue and Taxation*,
22 593 So. 2d 689 (La. App. 1st Cir. 1991) (citing Comment (b) to Civil Code Article
23 461 and determining that "electricity can be moved from one place to another and,
24 as such, is by definition a movable.")

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

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

35 §4802. Improvement of immovable by contractor; claims against the owner and
36 contractor; privileges securing the improvement

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

40 * * *

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

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 under the contractor's contract is legally
26 subrogated to their contractual rights but may not assert by subrogation their claims
27 against the owner arising under this Section or the privileges securing them. A
28 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 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 twenty 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 Act. In the case of some claimants, a notice must be given in order for a claim or
2 privilege to arise in the first instance. In the case of other claimants, a claim or
3 privilege is extinguished, in whole or in part, if a timely notice is not given. A notice
4 required under this Section must be given by one of the methods authorized in R.S.
5 9:4842 through 4845; it is not required to be filed in the public records, and a filing
6 in the public records will not satisfy the requirement of notice.

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

12 (c) Subsection B substantially relaxes the rather onerous notice requirements
13 previously imposed upon lessors of movables used at the site of an immovable.
14 Under former R.S. 9:4802(G)(1), a lessor was required to give notice, signed by both
15 the lessor and lessee, to the owner and contractor within ten days after the lessor's
16 movables were first placed at the site. A failure to give notice within that ten-day
17 period eliminated any privilege in the lessor's favor under either R.S. 9:4801(4) or
18 4802(A)(4), not only for rent owed with respect to the movables that were initially
19 placed at the site but also for rent owed for any other leased movables that were later
20 used in the course of the work. See *Hawk Field Servs., L.L.C. v. Mid Am.*
21 *Underground, L.L.C.*, 94 So. 3d 136 (La. App. 2d Cir. 2012), writ denied, 99 So. 3d
22 652 (La. 2012). This rule applied even when the owner was a party to the lease.
23 Under Paragraph (B)(1) of this Section, a lessor is required to give notice to the
24 owner and the contractor (if the contractor is not a party to the lease) in order to be
25 entitled to a claim and privilege under R.S. 9:4802(A)(4), but there is no rigid
26 deadline within which the lessor must do so. If, however, the notice is given more
27 than twenty days after the lessor's movables are first placed at the site, the claim and
28 privilege of the lessor is limited to rents accruing after the notice is given. No notice
29 is required to be given to a person who is a party to the lease and who should
30 therefore already be aware of its existence. The lessor's notice must include a
31 general description of the leased movables but need not state the terms of the lease
32 or identify the leased movables with specificity. For an owner or contractor who
33 desires more specific information, Paragraph (B)(2) introduces a mechanism by
34 which an owner or contractor can obtain a specific description of all leased movables
35 which remain at the site or for which rents remain owing.

36 (d) Subsection C applies only to sellers who supply movables to a
37 subcontractor on a work for which notice of contract has been timely filed. It
38 restates, in more precise terms, a requirement formerly contained in R.S.
39 9:4802(G)(3). As under prior law, an unpaid seller of a movable sold to a
40 subcontractor must deliver to the owner and contractor notice of nonpayment no later
41 than seventy-five days after the last day of the calendar month in which the movable
42 was delivered to the subcontractor. See *AP Interiors, LLC v. Coryell Cty.*
43 *Tradesmen, LLC*, 239 So. 3d 393 (La. App. 4th Cir. 2018). See also *J. Reed*
44 *Constructors, Inc. v. Roofing Supply Group, L.L.C.*, 135 So. 3d 752 (La. App. 1st
45 Cir. 2013) (placing this interpretation on the corresponding provision of the Public
46 Works Act, R.S. 38:2242(F)). Subsection C clarifies that a failure to send a timely
47 notice causes not only a loss of the seller's privilege but also the extinguishment of
48 his personal claim against the owner and contractor under R.S. 9:4802(A).

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

52 (f) The requirement of former R.S. 9:4802(G)(2) that an unpaid seller of
53 movables sold for use in a residential work deliver notice of nonpayment to the

1 owner at least ten days before filing a statement of his claim or privilege has been
2 suppressed.

3 (g) Where a timely notice of contract has been filed and includes the owner's
4 address, a claimant who wishes to preserve a claim and privilege granted to him
5 under R.S. 9:4802 must deliver a copy of his statement of claim or privilege to the
6 owner within the same time required for its filing in the mortgage records. See R.S.
7 9:4822(B).

8 §4805. Requests for statement of amounts owed

9 A. Within fifteen days after receipt of a written request from an owner or
10 contractor, a person who is granted a claim and privilege under R.S. 9:4802(A)(3)
11 or (4) but who has no direct contractual relationship with that owner or contractor
12 shall provide to that owner or contractor a statement of all amounts owed to the
13 person as of a date no earlier than forty-five days before the date of the response. The
14 request shall contain a reasonable identification of the work and shall state that a
15 failure to provide a timely or accurate response may result in a loss of all or part of
16 the person's claim and privilege. The person's failure to provide a timely and
17 accurate response to a request made under this Subsection shall extinguish the
18 person's claim and privilege under R.S. 9:4802(A)(3) or (4) to the extent of any
19 damages suffered by the owner or contractor as a result of the failure or inaccuracy.

20 B. Notwithstanding R.S. 9:4844, the period within which a person is required
21 to respond to a request made under Subsection A of this Section shall not commence
22 to run until the person's actual receipt of the request.

23 C. A person who provides a timely response to a request made under
24 Subsection A of this Section shall not be required to respond to another request made
25 by an owner or contractor within sixty days after receipt of the former request.

26 D. For purposes of this Section, an amount is considered to be owed to a
27 person when his right to payment of the amount has been earned by his performance,
28 regardless of whether he has rendered an invoice or billing for the amount.

29 E. Notwithstanding any agreement to the contrary, a person who receives a
30 request under this Section may provide to the owner and contractor in response to the
31 request a statement of amounts owed to the person.

1 Comments - 2019

2 (a) This Section is new. It establishes a means by which an owner or
3 contractor can request a statement of amounts owed to lessors and sellers who are
4 entitled to a claim and privilege under R.S. 9:4802 but who have no direct
5 contractual relationship with the owner or contractor making the request.

6 (b) A request for information under this Section must identify the work and
7 contain a warning that a failure to provide a timely or accurate response may result
8 in a loss of all or part of the claimant's claim and privilege. The request may be sent
9 by any of the methods authorized in R.S. 9:4842 through 4845, but the period within
10 which the claimant must respond does not commence to run until his actual receipt
11 of the request.

12 (c) A response to a request made under this Section must state the amount
13 owed to the claimant as of a date no earlier than forty-five days before the date of the
14 response. This requirement is imposed so that the information provided in the
15 response will be reasonably current. The claimant may always elect to provide
16 information that is current as of a more recent date. A failure to provide a timely and
17 accurate response does not cause an automatic loss of all of the claimant's rights
18 under R.S. 9:4802 but instead extinguishes his claim and privilege only to the extent
19 of any damages that the owner or contractor suffers as a result of the failure.

20 (d) Subsection E invalidates contractual provisions that purport to prohibit
21 a claimant from disclosing information to owners or contractors concerning the
22 amounts owed to him.

23 SUBPART B. DEFINITIONS

24 §4806. Owner defined; interest affected

25 A. An owner, co-owner, naked owner, ~~owner~~ usufructuary, other holder of
26 a ~~predial or personal~~ servitude, possessor, lessee, or other person ~~owning or~~ having
27 the right to ~~the use or enjoyment of~~ enjoy an immovable or having an interest therein
28 shall be deemed to be an owner under this Part.

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

36 C. ~~The~~ A privilege granted by R.S. 9:4801 ~~and~~ or 4802 affects only the
37 interest in or on the immovable enjoyed by the owner whose obligation is secured
38 by the privilege. If that owner is a lessee or holder of a servitude or otherwise

1 derives his interest in or on the immovable from another person, the privilege is
2 inferior and subject to all rights of, and obligations owed to, that person.

3 D. The ~~privilege~~ privileges granted by this Part upon a lessee's rights in the
4 lease or buildings ~~and structures and other constructions~~ shall be inferior and subject
5 to ~~all of the rights of, or obligations owed to, the lessor, including the right of the~~
6 lessor to resolve dissolve the lease for nonperformance of ~~its~~ the lessee's obligations,
7 and to execute upon the lessee's rights and to sell them in satisfaction of the
8 obligations free of the ~~privilege~~ privileges under this Part. If a sale of the lease is
9 made in execution of the claims of the lessor, the ~~privilege attaches~~ privileges under
10 this Part attach to that portion of the sale proceeds remaining after satisfaction of the
11 claims of the lessor.

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

16 Comments - 2019

17
18 (a) Under Subsection A, the definition of an owner for purposes of the
19 Private Works Act is much broader than the meaning ordinarily given to that term.
20 Anyone having the right to the use or enjoyment of an immovable can be an "owner"
21 under the Act, even if his interest is not ownership and even if, as in the case of a
22 lessee, he does not hold a real right in the immovable. Subsection B follows the
23 longstanding rule that R.S. 9:4802 gives rise to claims against only the owner who
24 contracted the work with the contractor and to other owners who agreed in writing
25 to the price and work of the contract and have expressly agreed in writing to be liable
26 for those claims. Mere consent by one owner to the performance of work contracted
27 by another, or knowledge that such work is in progress, is insufficient to impose
28 liability upon the owner who consents to or knows of the work. *Fruge v. Muffoletto*,
29 137 So. 2d 336, 341 (La. 1962); *Louisiana Industries v. Bogator, Inc.*, 605 So. 2d
30 213 (La. App. 2d Cir. 1992); and *Clegg Concrete, Inc. v. Bonfanti-Fackrell, Ltd.*, 532
31 So. 2d 465, 469 (La. App. 1st Cir. 1988).

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

39 (c) Subsection D, which represents a specific application to leases of the
40 general principle stated in Subsection C, recognizes that privileges arising under the
41 Private Works Act encumber not only the lessee's interest in the lease but also the

1 lessee's interest in buildings and other constructions. Buildings owned by a lessee
2 are classified under property law as immovable, but other constructions owned by
3 a lessee are movable. See Civil Code Article 464, Comment (d). Nevertheless, those
4 other constructions are to be treated as immovables for purposes of the Private
5 Works Act, and privileges arising under the Act against a lessee encumber them. See
6 R.S. 9:4810(4).

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

11 (e) Subsection E states the self-evident proposition that the mere inclusion
12 in a statement of claim or privilege of the name of an owner who is not responsible
13 for the claim does not impose liability for the claim upon that owner or create a
14 privilege upon his interest in the immovable. An owner who has no responsibility
15 under the Act might be named inappropriately in a statement of claim or privilege
16 on account of a mistake of law or fact or through a conscious desire on the part of the
17 claimant to err on the side of caution by including the names of anyone who could
18 possibly have liability as an owner. In those instances, the improperly named owner
19 is given the remedy of requesting, and ultimately requiring, a cancellation of the
20 statement of claim or privilege insofar as it affects his interest in the immovable. See
21 R.S. 9:4833(A)(2). There is one circumstance, however, in which the Private Works
22 Act, as amended by the 2019 revision, specifically permits an owner who has no
23 liability to be named in a statement of claim or privilege: Where the responsible
24 owner's interest in the immovable does not appear of record, the statement of claim
25 or privilege may instead identify the person who appears of record to own the
26 immovable. See R.S. 9:4822(G)(5). As Subsection E provides, this identification
27 does not create a privilege on that owner's interest in the immovable.

28 §4807. Contractor, general contractor, subcontractor defined

29 * * *

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

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

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

33 * * *

34 Comments - 2019

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

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

1 (c) Subsection C continues the former rule that the term "subcontractor"
2 includes sub-subcontractors of any tier. Accordingly, sub-subcontractors are granted
3 claims and privileges by R.S. 9:4802, as are those laborers who work for them and
4 those sellers and lessors who sell or lease movables to them. See R.S. 9:4802(A)(1),
5 (2), (3), and (4).

6 §4808. Work defined

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

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

15 C. The clearing, leveling, grading, test piling, cutting or removal of trees and
16 debris, placing of fill dirt, leveling of the land surface, demolition of existing
17 structures, or performance of other work on land for or by an owner ~~or the owner's~~
18 ~~contractor~~, in preparation for the construction or erection of a building or other
19 construction thereon to be substantially or entirely built or erected by a contractor,
20 shall be deemed a separate work to the extent the preparatory work is not a part of
21 the contractor's work ~~for the erection of the building or other construction~~. The
22 privileges granted by this Part for the work described in this Subsection shall have
23 no effect as to third persons acquiring rights in, to, or on the immovable before the
24 statement of claim or privilege is filed.

25 D. This Part does not apply to:

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

29 * * *
30 Comments - 2019

31 (a) The determination of what constitutes a "work" is relevant to an array of
32 issues that arise in the application of the Private Works Act. Because a general

1 contractor is defined by R.S. 9:4807(B) to include one who contracts to perform all
 2 or substantially all of a work, a determination of whether a contractor is a general
 3 contractor requires a determination of what "the work" is. The beginning of "the
 4 work" often determines the date that privileges arising under the Private Works Act
 5 become effective against third persons and, by extension, the priority of those
 6 privileges against other encumbrances upon the immovable. See R.S. 9:4820(A) and
 7 4821(A). The beginning of the work also determines whether notice of contract is
 8 timely filed, an issue that in turn has important consequences, such as whether an
 9 owner is relieved from liability under R.S. 9:4802(C), whether a seller of a movable
 10 sold to a subcontractor must provide a notice of nonpayment under R.S.
 11 9:4804(C)(1), whether R.S. 9:4811(D) operates to cause the forfeiture of the general
 12 contractor's privilege, and when statements of claim or privilege must be filed under
 13 R.S. 9:4822(B). The substantial completion or abandonment of the "work"
 14 determines when a notice of termination may be filed and when the delays for filing
 15 statements of claim or privilege begin to run. See R.S. 9:4822.

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

28 (c) Under Subsection B, if notice of contract with a contractor who would
 29 not otherwise be considered a general contractor is timely filed, the contractor is
 30 nonetheless deemed to be a general contractor, and the work to be performed under
 31 the contract is conclusively deemed to be a separate work, even though it may be part
 32 of a larger project being carried out by the owner. The 2019 revision to the Private
 33 Works Act removes the former requirement of the filing of a bond with the notice
 34 of contract in order to achieve this effect. Thus, where such a notice of contract is
 35 timely filed, with or without a bond, issues such as the time for filing statements of
 36 claim or privilege arising from the work covered by the contract, the liability of the
 37 surety, and all other aspects of the Private Works Act, are determined independently
 38 of other work being carried out by the owner. On the other hand, where a notice of
 39 contract is not filed in a timely manner, the question of whether work done by
 40 several contractors, or partly by the owner himself and partly by contractors, is so
 41 substantially interrelated as to constitute a single work is left to the determination of
 42 the courts in light of Subsection A.

43 (d) Subsection C considers preliminary site work to be in substance a
 44 separate work, unless it is performed by a contractor who is to construct a building
 45 or other improvement following the site work. This rule has important
 46 consequences. First, for those who are involved in the preliminary site work, the
 47 delays within which they must file a statement of claim or privilege will commence
 48 to run upon the substantial completion of the site work. Second, the privileges of
 49 those claimants who are involved in the construction of the building will not take
 50 effect against third persons or rank from the time that the preliminary site work
 51 began, but rather from the later date that work is begun as provided in R.S.
 52 9:4820(A)(2). The 2019 revision removes a prior legislative amendment that had
 53 made Subsection C applicable even when the site work was performed by the
 54 contractor engaged to construct the building, so long as this site work was governed
 55 by a separate contract. This prior amendment was largely unnecessary because,

1 under R.S. 9:4820(A)(2), preliminary site work, even if performed by the contractor
2 who will construct the building, does not mark the commencement of work or
3 determine the date that privileges arising under the Private Works Act will be
4 effective against third persons. The effect of the change made by the 2019 revision
5 is to afford persons performing preliminary site work for the building contractor the
6 same period of time within which to file a statement of claim or privilege following
7 completion of the entire work as is afforded to other claimants.

8 (e) The last sentence of Subsection C is an exception to R.S. 9:4820(A),
9 which provides that the filing of a notice of contract or the commencement of work
10 fixes the time when privileges arising under the Private Works Act become effective
11 as to third persons. Privileges for preliminary site work are effective as to third
12 persons only from the time that a statement of claim and privilege is filed. Thus, if
13 the owner sells the immovable before a statement of claim or privilege is filed, the
14 privilege of a claimant who performed only preliminary site work is lost, even if the
15 period allowed for its filing has not yet expired. The last sentence of Subsection C
16 does not, however, affect the ranking of the claimant's privilege against other persons
17 holding privileges arising under the Private Works Act. Once a privilege for site
18 work is preserved by the filing of a statement of claim or privilege, it ranks equally
19 with other Private Works Act privileges of the same nature, as provided in R.S.
20 9:4821(B), subject to the limited exception made in R.S. 9:4821(C). The last
21 sentence of Subsection C of this Section has an indirect effect on the ranking of
22 mortgages against privileges arising from preliminary site work (other than laborer's
23 privileges), by delaying the effectiveness of the privilege against third persons, and
24 accordingly its rank against mortgages, until the time of filing. See R.S.
25 9:4820(A)(2).

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

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

34 §4809. Substantial completion and abandonment of work defined

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

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

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

43 B. A work is abandoned by the owner if he terminates the work and notifies
44 persons engaged in its performance that he no longer desires to continue it or he

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

1 otherwise objectively and in good faith manifests the abandonment or discontinuance
2 of the project.

3 Comments - 2019

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

9 §4810. Miscellaneous definitions

10 For purposes of this Part:

11 (1) A "business day" is any day except for Saturdays, Sundays, and other
12 days on which the office of the clerk of court is closed in accordance with R.S.
13 1:55(E) in the parish of location of the immovable upon which work is to be or has
14 been performed.

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

17 (3) A "complete property description" of an immovable is any description
18 that, if contained in a mortgage of the immovable properly filed for registry, would
19 be sufficient for the mortgage to be effective as to third persons.

20 (4) An "immovable" is a thing that is classified by law as immovable, as well
21 as any construction that is permanently attached to the ground and that would be
22 classified by law as immovable if it belonged to the landowner.

23 (5) A "professional consultant" is a professional surveyor, professional
24 engineer, or licensed architect who is engaged by the owner or by a contractor or
25 subcontractor.

26 (6) A "professional subconsultant" is a professional surveyor, professional
27 engineer, or licensed architect who is engaged by a professional consultant.

28 (7) A "qualified inspector" is a professional surveyor, a professional
29 engineer, a licensed architect, a building inspector employed by the municipality or
30 parish in which an immovable being inspected is located, or a building inspector
31 employed by a lending institution chartered under federal or state law.

1 Comments - 2019

2 (a) This Section is new. It adds definitions of terms that are used in various
3 other provisions of the Private Works Act.

4 (b) As revised in 2019, the Private Works Act requires a complete property
5 description of an immovable in filings that are made by the owner or contractor. See
6 R.S. 9:4811(A)(2) and 4831(B). This Section defines that term to mean any
7 description which, if used in a recorded mortgage, would be sufficient for the
8 mortgage to have effect against third persons. A similar formulation is found in a
9 non-uniform provision of the Louisiana Uniform Commercial Code applicable to
10 financing statements covering standing timber, as-extracted collateral, and fixtures.
11 See R.S. 10:9-502(b)(3). Borrowing words used in the Code Napoleon, the Civil
12 Code requires a conventional mortgage to state "the nature and situation" of the
13 mortgaged immovable. There is a substantial body of Louisiana jurisprudence
14 interpreting that requirement, and the definition found in this Section is intended to
15 incorporate this jurisprudence. See, e.g., *H.J. Smith & Sons v. Baham*, 102 So. 657
16 (La. 1925); *Consolidated Association of Planters of Louisiana v. Mason*, 24 La. Ann.
17 518 (1872); *Mid-State Homes, Inc. v. Knapp*, 156 So. 2d 122 (La. App. 3d Cir.
18 1963). As R.S. 9:4831(B) provides, a statement of the street address of the
19 immovable without more is an insufficient description. See *Tee It Up Golf, Inc. v.*
20 *Bayou State Construction, LLC*, 30 So. 3d 1159 (La. App. 3d Cir. 2010); *Boes Iron*
21 *Works, Inc. v. Spartan Bldg Corp.*, 648 So. 2d 24 (La. App. 4th Cir. 1994); *Norman*
22 *H. Voelkel Const., Inc. v. Recorder of Mortgages for East Baton Rouge Parish*, (La.
23 App. 1st Cir. 2003).

24 (c) The definition of the term "immovable" in this Section has a broader
25 meaning than that given in the Civil Code, because the definition embraces not only
26 land and buildings, but also other constructions that are permanently attached to the
27 ground, even when those other constructions belong to someone who is not the
28 owner of the ground. Under the Civil Code, buildings are always immovable,
29 whether owned by the owner of the ground or someone else, but other constructions
30 are immovable only if they belong to the owner of the ground. If owned by someone
31 other than the owner of the ground, these other constructions are movable. See Civil
32 Code Article 464, Comment (d). The definition of the term "immovable" in this
33 Section includes all such other constructions permanently attached to the ground,
34 regardless of ownership. This more expansive definition has several consequences.
35 First, privileges arising under the Private Works Act will encumber these other
36 constructions, even though they are classified as movables under the Civil Code.
37 Second, work on other constructions permanently attached to the ground, even if not
38 involving a physical alteration of the land itself, will constitute a "work" for purposes
39 of the Private Works Act and will trigger its protections.

40 (d) This Section defines the terms "professional consultant" and
41 "professional subconsultant" with the professional designations currently used by the
42 engineering, surveying, and architectural professions. Only those surveyors,
43 engineers, and architects who are properly licensed or certified under the licensing
44 statutes applicable to their work are entitled to claims and privileges afforded to
45 professional consultants and professional subconsultants under the Private Works
46 Act.

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

1 SUBPART C. WORK PERFORMED BY GENERAL CONTRACTORS

2 §4811. Notice of a contract with a general contractor to be filed

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

6 * * *

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

10 * * *

11 B. A notice of contract is not improperly filed because of an error in or
12 omission from the notice in the absence of a showing of actual prejudice by a
13 claimant or other person acquiring rights in the immovable. An error in or omission
14 of the identity of the parties or their mailing addresses or the improper ~~identification~~
15 or insufficient description of the immovable shall be prima facie proof of actual
16 prejudice.

17 * * *

18 D. A general contractor shall not enjoy ~~the privilege granted by R.S. 9:4801~~
19 any privilege arising under this Part if the price of the work stipulated or reasonably
20 estimated in his contract exceeds ~~twenty-five~~ one hundred thousand dollars unless
21 notice of the contract is timely filed. A general contractor who is deprived on his
22 privilege by this Subsection shall not be entitled to file a statement of claim or
23 privilege for any amounts due him.

24 * * *

25 Comments - 2019

26 (a) This Section requires the filing of notice of contract before work
27 commences. The contract itself, or an abbreviated form of the contract, can be filed
28 rather than a notice of contract, if the document that is filed contains the required
29 information. The place of filing is provided in R.S. 9:4831(A). The consequences
30 of failing to file a timely notice of contract include the exposure of the owner to
31 liability for claims and privileges arising under R.S. 9:4802 and, in certain instances,
32 the loss of the general contractor's privilege, as provided in Subsection D.

1 (b) Subsection A is unchanged from former law, except for the requirement
2 that a notice of contract include a complete property description of the immovable,
3 rather than a "legal property description." What qualifies as a complete property
4 description of the immovable is determined by R.S. 9:4810(3) and 4831(B).

5 (c) As Subsection B provides, an error or omission in a notice of contract
6 does not cause it to be improperly filed in the absence of actual prejudice to a
7 claimant or third person, but an inaccurate or insufficient identification of the parties
8 or the immovable constitutes prima facie evidence of actual prejudice. Cf.
9 *Thompson Tree & Spraying Service, Inc. v. White-Spinner Construction, Inc.*, 68 So.
10 3d 1142 (La. App. 3d Cir 2011), writ denied, 71 So. 3d 290 (La. 2011) (holding that
11 the omission of a property description in a notice of contract did not cause it to be
12 improperly filed, in the absence of prejudice by the claimant, though the same
13 omission in a filed notice of termination was held to make it deficient) with *Norman*
14 *H. Voelkel Const., Inc. v. Recorder of Mortgages for East Baton Rouge*, 859 So. 2d
15 9 (La. App. 1st Cir. 2003) (holding that an insufficient property description in a filed
16 notice of contract caused it to be improperly filed in the absence of proof by the
17 claimant sufficient to rebut the presumption of actual prejudice).
18

19 (d) Filing of a notice of contract serves as notice of the potential existence
20 of Private Works Act privileges and fixes the date on which they become effective
21 against third persons and, by extension, their ranking against other encumbrances.
22 See R.S. 9:4820 and 4821. The filing of a notice of contract has other effects as
23 well, such as determining the length of the period permitted for filing statements of
24 claim or privilege following completion of the work and when the delays for such
25 filings will commence to run. See R.S. 9:4822. The absence of a bond does not
26 affect these issues, and for that reason Subsection C provides that the lack of a bond
27 does not cause the notice of contract to be improperly filed. Nevertheless, a notice
28 of contract filed without a bond attached, though effective for those purposes, will
29 not satisfy the requirements of R.S. 9:4802(C) and accordingly will not insulate the
30 owner from claims and privileges arising under R.S. 9:4802.

31 (e) Subsection D changes and clarifies the law in two important respects.
32 First, it increases to \$100,000 the threshold that applies to the requirement that a
33 general contractor cause notice of his contract to be filed before beginning work.
34 Although a general contractor is not required to file notice of a contract having a
35 price less than this threshold, the owner, in the absence of a timely filed notice of
36 contract and bond, will still be exposed to liability for claims and privileges arising
37 under R.S. 9:4802, regardless of whether the price of the contract is less than the
38 threshold. The second change is a rejection of the rationale of cases allowing general
39 contractors who fail to comply with the filing requirement of Subsection D
40 nonetheless to assert a privilege for labor and services that the contractor and his own
41 employees performed, on the theory that, to that extent, the general contractor is
42 acting as a mere ordinary contractor rather than a general contractor. See *Burdette*
43 *v. Drushell*, 837 So. 2d 54 (La. App. 1st Cir. 2002) and *Tharpe and Brooks, Inc. v.*
44 *Arnott Corporation*, 406 So. 2d 1 (La. App. 1st Cir. 1981). Where a person who is
45 defined by the Private Works Act as a general contractor fails to file a timely notice
46 of a contract having a price exceeding \$100,000, the consequence is that he is
47 deprived of any privilege under the Act without exception and is prohibited from
48 filing a statement of claim or privilege. If the general contractor nonetheless files a
49 statement of claim or privilege, the owner is entitled to obtain its cancellation under
50 R.S. 9:4833.

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

1 §4812. Bond required; terms and conditions

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

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

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

14 (2) ~~If the price is more than ten thousand dollars but not more than one~~
15 ~~hundred thousand dollars the amount of the bond shall be fifty percent of the price,~~
16 ~~but not less than ten thousand dollars.~~

17 (3) ~~If the price is more than one hundred thousand dollars but not more than~~
18 ~~one million dollars the amount of the bond shall be thirty-three and one-third percent~~
19 ~~of the price, but not less than fifty thousand dollars.~~

20 (4) ~~If the price is more than one million dollars the amount of the bond shall~~
21 ~~be twenty-five percent of the price, but not less than three hundred thirty-three~~
22 ~~thousand three hundred thirty-three dollars.~~

23 * * *

24 E. The bond given in compliance with this Part shall be deemed to include
25 the following conditions:

26 (1) Extensions of time for the performance of the work shall not extinguish
27 the obligation of the surety ~~but the surety who has not consented to the extensions~~
28 ~~has the right of indemnification under the original terms of the contract as provided~~
29 ~~by Article 3057 of the Civil Code.~~

1 §4813. Liability of the surety

2 * * *

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

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

11 Comments - 2019

12 (a) The liability of a general contractor's surety is regulated by the rules of
13 the suretyship rather than those of principal solidary obligors. See *Wisconsin Capital*
14 *Corp. & Trans. World Land Title Corp.*, 378 So. 2d 495 (La. App. 4th Cir. 1979);
15 *Louisiana Bank & Trust Co. v. Boutte*, 309 So. 2d 274 (La. 1975); and *Aiavolasiti*
16 *v. Versailles Gardens Land Dev. Co.*, 371 So. 2d 755 (La. 1979). As is now the case
17 with all sureties, the pleas of division and discussion are unavailable to a surety that
18 issues a bond under the Private Works Act. See Civil Code Article 3045.

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

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

32 (d) Subsection E provides that a claimant must file suit against the surety no
33 later than one year after the expiration of the time specified in R.S. 9:4822 for that
34 claimant to file his statement of claim or privilege. This is conceivably a longer
35 period of time than that allowed for the claimant to bring a suit against the owner
36 under R.S. 9:4823(A)(2), which requires the filing of suit against the owner no later
37 than one year after the claimant files his statement of claim or privilege. The reason
38 that a longer period of time is provided for suit against the surety is to accommodate
39 the rule in R.S. 9:4823(B) that a claim against a contractor is not extinguished by a
40 claimant's failure to file a timely statement of claim or privilege if a statement of the
41 claim or privilege is delivered to the contractor within the period allowed for its
42 filing by R.S. 9:4822. Under those circumstances, the claimant is permitted to bring
43 suit against the contractor and his surety no later than one year after the expiration
44 of the time given the claimant under R.S. 9:4822 to file his statement of claim or

1 privilege. That is the same period of time provided by Subsection E of this Section.
2 Of course, if R.S. 9:4823(B) does not apply and no suit is filed against the owner
3 before the expiration of one year after the filing of the claimant's statement of claim
4 or privilege, as required by R.S. 9:4823(A), then the claimant's rights against the
5 contractor will be lost, and the surety's liability to the claimant, being an accessory
6 to the contractor's liability, will likewise be extinguished.

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

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

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

21 SUBPART D. CLAIMS AND PRIVILEGES; EFFECTIVENESS;
22 PRESERVATION; RANKING; EXTINGUISHMENT

23 §4820. Privileges; effective date

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

- 27 (1) Notice of the contract is filed as required by R.S. 9:4811; ~~or,~~
- 28 (2) The work is begun by placing materials at the site of the immovable to
29 be used in the work or conducting other work at the site of the immovable the effect
30 of which is visible from a simple inspection and reasonably indicates that the work
31 has begun. For these purposes, the site of the immovable is defined as the area
32 within the boundaries of the property. In determining when work has begun,
33 services rendered by a professional consultant, professional subconsultant, or other
34 surveyor, architect, or engineer, or the placing of materials having an aggregate price
35 of less than one hundred dollars on the immovable, driving of test piling, cutting or
36 removal of trees and debris, placing of fill dirt, demolition of existing structures, and
37 clearing, grading, or leveling of the land surface shall not be considered, ~~nor shall the~~

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

1 ~~placing of materials having an aggregate price of less than one hundred dollars on~~
2 ~~the immovable be considered. For these purposes, the site of the immovable is~~
3 ~~defined as the area within the boundaries of the property.~~

4 B.(1) If ~~the~~ work for which notice of contract was not filed as required by
5 R.S. 9:4811 is for the addition, modification, or repair of an existing building or
6 other construction, the suspension of the work for thirty days or more shall cause that
7 part of the work performed before a third person's rights become effective shall the
8 suspension to be considered, for the purposes of R.S. 9:4821 ranking privileges
9 arising under this Part against the rights of third persons, ~~be considered a distinct~~
10 separate work from the work performed after such rights become effective thereafter.
11 A work is suspended if the cost of the work done, in labor and materials, is less than
12 one hundred dollars during ~~the thirty-day~~ a period of thirty days or more immediately
13 preceding the time such third person's rights become effective as to third persons.

14 (2) A privilege arising under this Part with respect to work performed before
15 the suspension, other than a privilege arising under R.S. 9:4801(2) or a privilege
16 securing a claim arising under R.S. 9:4802(A)(2), retains its priority under R.S.
17 9:4821 over the rights of third persons acquired prior to the resumption of work only
18 if the claimant having the privilege files a statement of claim or privilege no later
19 than sixty days after the commencement of the suspension.

20 C. A person acquiring or intending to acquire a mortgage, privilege, or other
21 right, in or on an immovable may conclusively rely upon an affidavit made by a
22 ~~registered or certified engineer or surveyor, licensed architect, or building qualified~~
23 ~~inspector employed by the city or parish or by a lending institution chartered under~~
24 ~~federal or state law, to the effect that~~ states he inspected the immovable at a specified
25 time and work had not then been commenced nor materials placed at its site,
26 provided the inspection occurs, and the affidavit is filed, within four business days
27 before or within four business days after the execution of the affidavit, and filing of
28 the mortgage, privilege, or other document creating the right is ~~filed before or within~~
29 ~~four business days of the filing of the affidavit.~~ The correctness of Insofar as the

1 rights of the person to whom or for whom the affidavit is given are concerned, the
 2 facts recited in the affidavit shall be deemed to be true at the time of the inspection
 3 and to remain true at the time of the filing of the mortgage, privilege, or other
 4 document, and the correctness of those facts may not be controverted to affect the
 5 priority of the rights of the person to whom or for whom it is given, unless actual
 6 fraud by such person is ~~proven~~ proved. A person who gives a false ~~or fraudulent~~
 7 affidavit shall be responsible for any loss or damage suffered by any person whose
 8 rights are adversely affected.

9 D. ~~A person acquiring or intending to acquire a mortgage, privilege, or other~~
 10 ~~right under Subsection C of this Section shall have priority in accordance with R.S.~~
 11 ~~9:4821, regardless of whether work has begun or materials were delivered to the job~~
 12 ~~site after the effective date and time of the affidavit, but prior to the recordation of~~
 13 ~~the mortgage, privilege, or other right, provided that the document creating the right~~
 14 ~~was filed before or within four business days of the filing of the affidavit.~~
 15 Notwithstanding the other provisions of this Part, the privileges granted upon an
 16 immovable by R.S. 9:4801(5) and those securing a claim arising under R.S.
 17 9:4802(A)(5) shall have no effect as to third persons acquiring rights in, to, or on the
 18 immovable before the statement of claim or privilege is filed.

19 E. If, following cancellation of a notice of contract in accordance with R.S.
 20 9:4832(C), another notice of contract is filed, the date of the later filing shall be the
 21 date of filing of notice of contract for purposes of this Section.

22 Comments - 2019

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

30 (b) The general rule under the Civil Code is that, subject to exceptions
 31 provided by law, privileges upon immovables are not effective against third persons
 32 until recorded. See Civil Code Article 3274. This Section constitutes an exception
 33 to that general rule, because it permits Private Works Act privileges to be effective
 34 as to third persons, even without filing, provided that a statement of claim or
 35 privilege is ultimately filed to preserve the privilege within the time required by R.S.

1 9:4821. Under Subsection A, most privileges arising under the Act are effective as
 2 to third persons when notice of contract is filed in accordance with R.S. 9:4811 or
 3 when work is begun, whichever occurs first. Paragraph (A)(2) states the criteria used
 4 to determine when work has begun. For purposes of determining when work has
 5 begun, preliminary site work, whether performed by the contractor or someone else,
 6 is ignored, as are surveying, architectural, and engineering work and the placement
 7 on the site of materials having an aggregate value of less than \$100.

8 (c) As its introductory clause indicates, the basic rule stated in Subsection
 9 A is itself subject to exceptions found in other provisions of the Act. One such
 10 exception appears in Subsection D, which restates, with some modification, a rule
 11 previously provided in former R.S. 9:4822(D)(1)(b). Under Subsection D, privileges
 12 arising under R.S. 9:4801(5) and those securing a claim arising under R.S.
 13 9:4802(A)(5) are not effective as to third persons until a statement of claim or
 14 privilege is filed. See *G.R.W. Engineers, Inc. v. Elam*, 557 So. 2d 725 (La. App. 2d
 15 Cir. 1990); *C & J Contractors v. American Bank & Trust Co.*, 559 So. 2d 810 (La.
 16 App. 1st Cir. 1990). A similar exception applies to privileges arising from
 17 preliminary site work. See R.S. 9:4808(C).

18 (d) Subsection B, which continues a rule contained in the former provision,
 19 has been revised in order to state more clearly the effect of a temporary suspension
 20 of a work involving an existing building or other structure when notice of contract
 21 has not been filed. A suspension of work of that nature for thirty days or more
 22 causes that part of the work performed before the suspension to be considered, for
 23 ranking purposes only, to be a separate work from the work performed afterward.
 24 Under Paragraph (B)(2), the rights of a claimant having a Private Works Act
 25 privilege, other than a laborer's privilege, with respect to work performed before the
 26 suspension will become subject to mortgages and other third party rights acquiring
 27 the effect of recordation prior to the resumption of work, unless the claimant files a
 28 statement of claim or privilege no later than sixty days after the commencement of
 29 the suspension. Subsection B does not require the claimant to file within that period
 30 in order to preserve his claim and privilege, and he is permitted to defer filing until
 31 any time before the ordinary period for filing claims and privileges under R.S.
 32 9:4822 expires following completion of the work. If the claimant chooses to do so,
 33 however, he runs the risk that his privilege will become subject to mortgages and
 34 other rights of third persons acquired prior to the resumption of work. The words
 35 "other construction" in Subsection B mean a construction other than a building and
 36 are not a general reference to other types of construction work. See Civil Code
 37 Article 463.

38 (e) Subsection C continues the concept that a mortgagee or other person
 39 intending to acquire a right in an immovable may conclusively rely upon the facts
 40 asserted in a timely filed affidavit from a qualified inspector that work has not begun.
 41 The effect of the affidavit is to preclude Private Works Act claimants from
 42 contesting the facts recited in the affidavit and claiming priority under R.S.
 43 9:4821(A)(2) on the ground that work had actually already begun, despite the
 44 recitations of the affidavit. The affidavit does not, however, necessarily assure the
 45 mortgagee or other person obtaining the affidavit of priority over Private Works Act
 46 privileges. The affidavit may fail to contain sufficient factual recitations to negate
 47 the commencement of work or, contrary to the intended effect of the affidavit, may
 48 recite facts establishing that work had actually begun. Moreover, if notice of
 49 contract has already been filed, an affidavit to the effect that work has not yet begun
 50 will be useless in establishing the mortgagee's priority over Private Works Act
 51 privileges arising out of that work, because those privileges will be effective against
 52 third persons under Subsection A as of the time of filing the notice of contract,
 53 irrespective of the fact that work has not yet begun, and will therefore have priority
 54 over mortgages filed after the notice of contract. See R.S. 9:4821(A)(2).

1 (f) Subsection C both alters and clarifies prior provisions of the Private
 2 Works Act applicable to affidavits of no work. First, it provides that both the
 3 inspection and the filing of the affidavit must occur within four business days before,
 4 or within four business days after, the filing of the mortgage or other document
 5 creating the rights of the person obtaining the affidavit. This is intended to ensure
 6 that the facts recited in the affidavit are not unreasonably stale, while at the same
 7 time preventing parties from manufacturing evidence long after the fact. Second,
 8 Subsection C provides that the facts recited in the affidavit are not only deemed to
 9 be true at the time of the inspection but also to remain true through the critical
 10 moment in time when the mortgage or other document is filed. This provision is
 11 intended to obviate the need for a mortgagee to arrange for a second inspection and
 12 to file a second affidavit of no work after filing its mortgage. As under prior law, the
 13 correctness of the facts recited in a timely filed affidavit may not be controverted to
 14 affect the priority of the rights of the person obtaining the affidavit in the absence of
 15 proof of fraud by that person.

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

19 §4821. Ranking of privileges

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

22 ~~(1) Privileges for ad valorem taxes or local assessments for public~~
 23 ~~improvements against the property, liens, and privileges granted in favor of parishes~~
 24 ~~for reasonable charges imposed on the property under R.S. 33:1236, liens and~~
 25 ~~privileges granted in favor of municipalities for reasonable charges imposed on~~
 26 ~~property under R.S. 33:4752, 4753, 4754, 4766, 5062, and 5062.1, and liens and~~
 27 ~~privileges granted in favor of a parish or municipality for reasonable charges~~
 28 ~~imposed on the property under R.S. 13:2575 are first in rank and concurrent~~
 29 ~~regardless of the dates of recordation or notation of such liens and privileges in any~~
 30 ~~public record, public office, or public document.~~

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

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

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

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

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

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

8 (1) All privileges granted by this Part are inferior to privileges for ad
9 valorem taxes or local assessments for public improvements against the immovable,
10 privileges granted in favor of parishes for reasonable charges imposed on the
11 immovable under R.S. 33:1236, privileges granted in favor of municipalities for
12 reasonable charges imposed on the immovable under R.S. 33:4752, 4753, 4754,
13 4766, 5062, and 5062.1, and privileges granted in favor of a parish or municipality
14 for reasonable charges imposed on the immovable under R.S. 13:2575.

15 (2) Each privilege granted by this Part other than those arising under R.S.
16 9:4801(2) and those securing a claim arising under R.S. 9:4802(A)(2) is inferior to
17 bona fide mortgages and vendor's privileges that are effective as to third persons
18 before the privilege granted by this Part becomes effective as to third persons.

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

1 Code giving priority to privileges over all mortgages. See Civil Code Article 3186.
 2 The time that Private Works Act privileges become effective as to third persons is
 3 determined by R.S. 9:4820 and, in the case of privileges for preliminary site work,
 4 R.S. 9:4808(C). When mortgages and vendor's privileges become effective as to
 5 third persons is determined by other law. See, e.g., *G.R.W. Engineers, Inc. v. Elam*,
 6 557 So. 2d 725 (La. App. 2d Cir. 1990); *American Bank & Trust Co. v. F & W*
 7 *Const.*, 357 So. 2d 1226 (La. App. 2d Cir. 1978). See generally Civil Code Articles
 8 3274, 3298(B), and 3338(1); R.S. 9:5551.

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

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

17 (e) Subsection B makes explicit a concept that could be inferred from former
 18 R.S. 9:4821 but was expressly stated only in the Comments to that Section and to
 19 former R.S. 9:4808: Private Works Act privileges of the same nature rank equally,
 20 regardless of whether they arise from the same work or different works and
 21 regardless of the dates on which the privileges become effective as to third persons.
 22 This is consistent with the general rules of the Civil Code that privileges are ranked
 23 by their nature, rather than by the order in which they arise or are filed, and that
 24 privileges of the same nature rank concurrently. See Civil Code Articles 3187 and
 25 3188. Thus, with the exception stated in Subsection C, privileges of subcontractors,
 26 sellers, and lessors all enjoy equal rank among themselves, even if they arise from
 27 different works and even if one of those works was completed before the other
 28 began.

29 (f) Subsection C is new. It is intended to reduce the possibility of circular
 30 priorities resulting from application of the ranking rules discussed above. Any
 31 system that ranks encumbrances by different criteria, such as by the nature of some
 32 but by the order of filing of others, implicitly permits the possibility of so-called
 33 "vicious circles." This was possible under the former system, and it remains possible
 34 under the 2019 revision. For instance, if two different works are started and
 35 completed in two successive years, and a mortgage is filed after one work is
 36 completed but before the second work begins, a contractor's privilege arising from
 37 the first work will prime the mortgage, which in turn will prime a subcontractor's
 38 privilege arising from the second work, which will, by its nature, prime the
 39 contractor's privilege arising from the first work. Subsection C is intended to resolve
 40 the ranking problem that arises under these circumstances by breaking the vicious
 41 circle. The contractor's privilege, which in this example unquestionably has priority
 42 over the intervening mortgage, is also granted priority over the subcontractor's
 43 privilege by operation of Subsection C. This analysis assumes, of course, that the
 44 contractor takes proper action to preserve his privilege. See R.S. 9:4811(D) and
 45 4822. Subsection C will not eliminate all vicious circles, and if one arises that
 46 cannot be resolved by application of Subsection C, the court will have to resort to
 47 other principles to determine the proper distribution of proceeds of the immovable,
 48 such as application of the rule under Civil Code Article 3134 that creditors are
 49 entitled to share ratably in the proceeds of a debtor's property in the absence of a
 50 preference authorized or established by legislation.

51 (g) Subsection D is new. It is necessitated by the definition of the term
 52 "immovable" in the 2019 revision of the Act to include not only land and buildings
 53 but also other constructions that are permanently attached to the ground, even when

1 those other constructions belong to someone who is not the owner of the ground.
 2 See R.S. 9:4810(4). This definition of the term "immovable" will cause Private
 3 Works Act privileges to encumber those other constructions, despite their
 4 classification as movables under property law. Because they are movables, it is
 5 possible that they may be subject to security interests created and perfected under
 6 Chapter 9 of the Uniform Commercial Code, perhaps even by a filing in another
 7 jurisdiction. Subsection D supplies the needed ranking rule: A Private Works Act
 8 privilege is inferior to those conflicting Chapter 9 security interests that were
 9 perfected before the privilege became effective against third persons or that are later
 10 perfected by a financing statement that was filed before the privilege became
 11 effective against third persons. This allows Chapter 9 security interests to continue
 12 to benefit from the "first-to-file-or-perfect" priority rule that is generally applicable
 13 under Chapter 9. See R.S. 10:9-322(a)(1). The date of filing of the statement of
 14 claim or privilege filed to preserve the Private Works Act privilege is, however,
 15 irrelevant. A similar priority rule appears in the statute ranking Chapter 9 security
 16 interests against privileges for labor, services, or supplies provided in connection
 17 with oil, gas, and water wells. See R.S. 9:4870(B)(3).

18 §4822. Preservation of claims and privileges

19 A. Except as otherwise provided in Subsections B and C of this Section, a
 20 person granted a privilege under R.S. 9:4801 or a claim and privilege under R.S.
 21 9:4802 shall file a statement of his claim and privilege no later than sixty days after:

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

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

25 B. If a notice of contract is properly and timely filed in the manner provided
 26 by R.S. 9:4811, ~~the persons~~ a person to whom a claim or privilege is granted by R.S.
 27 9:4802 shall ~~within thirty days after the filing of a notice of termination of the work~~
 28 file a statement of his claim and privilege and deliver to the owner, if his address is
 29 given in the notice of contract, a copy of the statement of claim and privilege, no
 30 later than:

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

33 (2) ~~Deliver to the owner a copy of the statement of claim or privilege. If the~~
 34 ~~address of the owner is not given in the notice of contract, the claimant is not~~
 35 ~~required to deliver a copy of his statement to the owner.~~ Six months after the
 36 substantial completion or abandonment of the work, if a notice of termination is not
 37 filed.

1 ~~B.C.~~ A general contractor to whom a privilege is granted by R.S. 9:4801 of
2 this Part, and whose privilege has been preserved in the manner provided by R.S.
3 9:4811, shall file a statement of his privilege ~~within sixty days after the filing of the~~
4 ~~notice of termination or substantial completion of the work.~~ no later than:

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

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

8 ~~C.~~ Those persons granted a claim and privilege by R.S. 9:4802 for work
9 arising out of a general contract, notice of which is not filed, and other persons
10 ~~granted a privilege under R.S. 9:4801 or a claim and privilege under R.S. 9:4802~~
11 shall file a statement of their respective claims and privileges within sixty days after:

12 ~~(1) The filing of a notice of termination of the work; or~~

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

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

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

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

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

28 ~~(a) The filing of a notice of termination of the work; or~~

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

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

4 (1) Shall ~~reasonably identify~~ contain a complete property description of the
5 immovable upon which the work was performed and the work to which it relates.
6 If the work is evidenced by notice of a contract, reference to the notice of contract,
7 together with its registry number or other appropriate recordation information and
8 ~~as filed or recorded, together with the names of the parties to the~~ as they appear in
9 the notice of contract, shall be deemed adequate identification of the ~~immovable and~~
10 work.

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

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

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

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

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

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

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

24 E. If the work has been substantially completed or has been abandoned by
25 the owner, the owner shall file a notice of termination of the work no later than ten
26 days after receipt of a request for its filing from the general contractor. If the owner
27 fails to do so, the general contractor may institute a summary proceeding against him
28 for a judgment decreeing that the work has been substantially completed or has been
29 abandoned by the owner. Provided that the judgment contains the information

1 required by Paragraph (D)(1) of this Section and identifies the owner, it shall have
2 the effect of a notice of termination of the work from the time of its filing in the
3 mortgage records.

4 F. A notice of termination ~~or substantial completion~~ may be filed from time
5 to time with respect to a specified ~~portion or~~ area of work an immovable. In that
6 case, the time for preserving privileges or claims as specified in Subsection A or ~~€~~
7 B of this Section shall commence with the filing of the notice of termination ~~or~~
8 ~~substantial completion~~ as to amounts owed and arising from the work done on that
9 ~~portion or~~ area of the work immovable described in the notice of termination. This
10 notice shall ~~identify the portion or~~ contain a complete property description of the
11 specified area of the ~~land~~ immovable and certify that the work performed on that
12 ~~portion of the land~~ area is substantially completed or has been abandoned. ~~Once the~~
13 ~~period for preserving claims and privileges has expired and no liens have been timely~~
14 ~~filed, the portion or area of work described in the notice of termination shall be free~~
15 ~~of the claims and privileges of those doing work on the area described in the notice~~
16 ~~of termination, as well as those doing work elsewhere on the immovable being~~
17 ~~improved.~~

18 G. A statement of a claim or privilege:

19 (1) Shall be in writing.

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

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

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

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

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

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

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

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

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

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

25 I. If a person granted a claim and privilege under R.S. 9:4802 has given to
26 an owner a notice complying with Subsection H of this Section, the owner shall
27 notify that person within ten days after the substantial completion or abandonment
28 of the work or the filing of notice of termination of the work. If the owner does not
29 do so and if the person fails to file a statement of claim or privilege within the period

1 provided by this Section, the failure shall not extinguish the person's claim against
2 the owner granted by R.S. 9:4802(A), and the claim shall remain enforceable against
3 the owner provided that an action for its enforcement is brought no later than one
4 year after the expiration of that period. Nevertheless, the privilege arising in favor
5 of the person under R.S. 9:4802(B) shall be extinguished by his failure to file a
6 timely statement of claim or privilege, regardless of whether the owner has failed to
7 give him notice when required under this Subsection.

8 ~~J. Before any person having a direct contractual relationship with a~~
9 ~~subcontractor, but no contractual relationship with the contractor, shall have a right~~
10 ~~of action against the contractor or surety on the bond furnished by the contractor, he~~
11 ~~must record his claim as provided in this Section and give written notice to the~~
12 ~~contractor within thirty days from the recordation of notice of termination of the~~
13 ~~work, stating with substantial accuracy the amount claimed and the name of the party~~
14 ~~to whom the material was furnished or supplied or for whom the labor or service was~~
15 ~~done or performed. Such notice shall be served by mailing the same by registered~~
16 ~~or certified mail, postage prepaid, in an envelope addressed to the contractor at any~~
17 ~~place he maintains an office in the state of Louisiana.~~

18 ~~K.(1) Any person to whom a privilege is granted by R.S. 9:4802 may give~~
19 ~~notice to the owner of an obligation to that person arising out of the performance of~~
20 ~~work under the contract. The notice shall be given prior to:~~

21 ~~(a) The filing of a notice of termination of the work; or~~

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

24 ~~(2) The method of notice shall be under R.S. 9:4842(A). The notice shall set~~
25 ~~forth the nature of the work or services performed by the person to whom the~~
26 ~~obligation is owed and shall include his mailing address.~~

27 ~~L.(1) When notice under Subsection K has been given by a person to the~~
28 ~~owner, the owner shall notify that person as required by R.S. 9:4842(A) within three~~
29 ~~days of:~~

1 untimely. If Subsection B applies and no notice of termination is filed, the period
2 for filing statements of claim or privilege will nevertheless expire six months after
3 substantial completion or abandonment of the work, and a statement of claim or
4 privilege filed later than that will be untimely.

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

18 (e) Subsection C, which corresponds to Subsection B of the former
19 provision, provides the period within which general contractors must file statements
20 of privilege. Subsection C applies by its terms regardless of whether notice of
21 contract is filed, but a general contractor under a contract for more than \$100,000
22 will not be entitled to file a statement of privilege at all unless he has caused notice
23 of contract to be timely filed. See R.S. 9:4811(D). As under former law, the general
24 contractor ordinarily must file a statement of privilege no later than sixty days after
25 the filing of a notice of termination. The contractor can shorten this period by
26 acquiescing in the cancellation of the notice of contract. See R.S. 9:4832(A).
27 Subsection C makes clear that the sixty-day period runs from the filing of notice of
28 termination, not from substantial completion or abandonment of the work. See
29 *Golden Nugget Lake Charles, L.L.C. v. W. G. Yates & Sons Construction Company*,
30 850 F.3d 231 (5th Cir. 2017). If, however, no notice of termination is filed,
31 Subsection C now requires that the contractor file his statement of privilege no later
32 than seven months after the substantial completion or abandonment of the work. The
33 sixty-day and seven-month periods are intended to grant the general contractor
34 additional time to file following the expiration of the period that applies to claimants
35 subject to Subsection B. As with the six-month period imposed by Subsection B, the
36 seven-month period in Subsection C is not a lengthening of the period allowed to a
37 general contractor to file his statement of privilege but rather represents the
38 imposition of an outside deadline that applies if no notice of termination is filed.

39 (f) Subsection C applies only to general contractors, as defined in R.S.
40 9:4807(B). Other contractors entitled to a privilege under R.S. 9:4801(1), as well as
41 all persons entitled to a privilege under R.S. 9:4801(2), (3), (4) and (5), must file
42 within the period prescribed by Subsection A. See *Evangeline Brokerage Co., Inc.*
43 *v. Lewis*, 539 So. 2d 1311 (La. App. 3d Cir. 1989).

44 (g) Subsection D, which corresponds to former Subsection E, includes both
45 stylistic and substantive changes in the former provision. A notice of termination,
46 which is one of several documents that the Private Works Act requires or permits an
47 owner to file, must contain a complete property description, rather than merely a
48 reasonable identification, of the immovable. See R.S. 9:4810(3) and R.S. 9:4831(B)
49 and (C). As revised, Subparagraph (D)(3)(c) implicitly recognizes that multiple
50 contractors can be involved on a single work, and a default by only the general
51 contractor should be a basis for filing a notice of termination. Subparagraph
52 (D)(3)(d), which is new, allows a notice of termination when the contract with the
53 general contractor terminates in the absence of default, such as a termination for

1 convenience. The revision to Paragraph (D)(4) is discussed in the following
2 Comment.

3 (h) Paragraph (D)(4) makes the owner's good faith the test of the validity of
4 a notice of termination but does not attempt to specifically regulate the question of
5 what happens if the notice is filed in bad faith. Because the filing periods of this
6 Section do not expressly depend upon whether the notice of termination is filed in
7 good faith, a notice of termination filed in bad faith should have effect if the rights
8 of third persons (such as a person who acquires a mortgage after the apparent filing
9 period has expired) are involved. At the same time, because a person ordinarily
10 cannot assert his own misconduct as a defense, a notice of termination filed in bad
11 faith should be ineffective as to the owner himself. Paragraph (D)(4) has been
12 revised to provide that the conclusive presumption of correctness arising from the
13 filing of a notice of termination is limited in its effect to the purposes of the Act
14 itself. A unilateral statement made by an owner in a notice of termination that the
15 general contractor defaulted, even if the statement is made in good faith, should not
16 be given conclusive effect in litigation over that issue between the owner and general
17 contractor.

18 (i) Subsection E is new. It provides a mechanism by which a general
19 contractor can force an owner to file a notice of termination following substantial
20 completion or abandonment of the work in order to commence the running of the
21 thirty-day filing period under Subsection B.

22 (j) The changes made to Subsection F are intended to restore the substance
23 of the Subsection to its original meaning, while at the same time reversing the effect
24 of a subsequent legislative amendment. Subsection F permits the filing of a notice
25 of termination if work over a specific geographic area has been completed and the
26 parties wish to be certain that all Private Works Act claimants have been paid for
27 work performed on that geographic area. The filing of a notice of termination under
28 Subsection F triggers the running of the filing periods specified in Subsections A or
29 B as to amounts owed from the work done on the area of the immovable described
30 in the notice of termination. The filing of a notice of termination under Subsection
31 F will not, however, truncate the filing periods applicable to claims and privileges
32 arising from work elsewhere on the immovable. The 2019 revision reverses the
33 effect of a prior legislative change to Subsection F that purported to free the
34 described portion of the immovable from privileges of those claimants who
35 performed (or later perform) work elsewhere on the immovable. Those claimants
36 presumably performed or agreed to perform work in reliance upon the entire
37 immovable as security for their claims, and unfairness potentially results when they
38 are deprived without their consent of a portion - and perhaps the major portion - of
39 this security during the course of a work.
40

41 (k) Subsection G specifies the information that is required to be contained
42 in a claimant's statement of claim or privilege. It largely continues existing law,
43 including the rule that a statement of claim or privilege need contain only a
44 reasonable identification of the immovable rather than a complete property
45 description. A statement of the street address of the immovable without more is not
46 a sufficient identification. See R.S. 9:4831(B). There is no requirement that a
47 statement of claim or privilege be executed by authentic act, be acknowledged before
48 a notary, or take the form of a sworn affidavit. Paragraph (G)(5), which is new, is
49 intended to assist a claimant in reciting the name of the "owner" in his statement of
50 claim or privilege when the owner who is responsible for the claim (such as a lessee
51 under an unrecorded lease) does not have an interest that appears of record. Under
52 those circumstances, the statement of claim or privilege may instead identify the
53 person who appears of record to own the immovable. Naming such a person in the
54 statement of claim or privilege also increases the likelihood that persons searching
55 the mortgage records will be able to find the statement of claim or privilege through

1 reasonable efforts. Nevertheless, inclusion of the name of an owner who has no
2 responsibility for the claim, even when authorized by Subsection G, does not create
3 a privilege on that owner's interest in the immovable. See R.S. 9:4806(E).

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

11
12 (l) Subsections H and I, which replace former Subsections K and L, provide
13 a mechanism by which a claimant granted a claim and privilege under R.S. 9:4802
14 can request notice from the owner of the substantial completion or abandonment of
15 the work or of the filing of notice of termination of the work. Those events all
16 potentially start the running of the delays within which the claimant must file in
17 order to preserve his claim and privilege. The former provision allowed a claimant
18 to request notice, but the remedy that it provided (recovery of attorney fees without
19 preservation of the claimant's claim against the non-complying owner) was wholly
20 unsuited to address the harm the claimant might suffer if the owner failed to comply
21 with the request. See *Buck Town Contractors & Co. v. K-Belle Consultants, LLC*,
22 216 So. 3d 981 (La. App. 4th Cir. 2016); *Byron Montz, Inc. v. Conco Construction,*
23 *Inc.*, 824 So. 2d 498 (La. App. 4th Cir. 2002). Under revised Subsection I, if an
24 owner does not comply with a claimant's request under Subsection H for notice of
25 the substantial completion or abandonment of the work or of the filing of notice of
26 termination of the work, the claimant's failure to file a timely statement of claim or
27 privilege does not cause the loss of his claim against the owner under R.S.
28 9:4802(A). Nevertheless, the claimant's privilege under R.S. 9:4802(B) will be
29 extinguished by his failure to file. The claimant's rights against the contractor and
30 surety will also be extinguished by the claimant's failure to file a statement of claim
31 or privilege, unless the claimant preserves his rights against them by delivering to
32 the contractor a timely statement of claim or privilege under R.S. 9:4823(B).

33 (m) The rule of former Paragraph (D)(1) that privileges arising under R.S.
34 9:4801(5) and those securing a claim arising under R.S. 9:4802(A)(5) are not
35 effective as to third persons until the time of filing of the statement of claim or
36 privilege now appears in R.S. 9:4820(D).

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

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

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

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

1 §4823. Extinguishment of claims and privileges

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

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

7 (2) The claimant or holder of the privilege does not institute an action against
8 the owner for the enforcement of the claim or privilege within one year after filing
9 the statement of claim or privilege to preserve it; ~~or~~.

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

11 B. ~~A~~ Notwithstanding Subsection A of this Section, a claim against a
12 contractor granted by R.S. 9:4802 is not extinguished by the failure to file a
13 statement of claim or privilege as required by R.S. 9:4822 if a statement of the claim
14 or privilege is delivered to the contractor within the period allowed for its filing by
15 R.S. 9:4822. The failure to file an action against the owner as required by ~~R.S.~~
16 ~~9:4823(A)(2)~~ Paragraph (A)(2) of this Section shall not extinguish a claim against
17 a contractor or his surety if an action for the enforcement of the claim is instituted
18 against the contractor or his surety within no later than one year after the expiration
19 of the time given by R.S. 9:4822 for filing the statement of claim or privilege to
20 preserve it.

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

24 * * *

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

28 F. In a concursus proceeding brought under R.S. 9:4841, the joinder of the
29 owner and a person who has a privilege or a claim against the owner, or the joinder

1 of the contractor or surety and a person who has a claim against the contractor,
2 constitutes the institution of an action for the enforcement of the claim or privilege
3 against the owner, contractor, or surety, as the case may be.

4 Comments - 2019

5 (a) This Section requires the timely filing of statements to preserve claims
6 and privileges arising under the Private Works Act and the institution of suits for
7 their enforcement. The effect of failing to take the required action results in the
8 extinguishment of those claims and privileges. Under Subsection A, action taken to
9 preserve the claim against the owner also prevents its extinguishment against the
10 contractor or surety. Providing for the extinguishment of rights against the
11 contractor and surety when the claim has been preserved against the owner would
12 be pointless in light of the owner's rights of indemnity from the contractor. See R.S.
13 9:4802(F).

14 (b) Paragraph (A)(1) should be read in conjunction with R.S. 9:4831(D),
15 which provides that a statement of claim or privilege identifying an immovable by
16 reference to a notice of contract that itself does not contain a reasonable
17 identification of the immovable is insufficient to preserve the claimant's privilege
18 against third persons but is nevertheless sufficient to preserve the claimant's rights
19 against the owner, the contractor, and the surety. Of course, the claimant would still
20 have to institute a timely action against the owner in accordance with Paragraph
21 (A)(2) to prevent loss of the claim.

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

26 (d) Subsection B provides that the extinction of the claim against the owner
27 will not necessarily extinguish the statutory claim against the contractor, if the
28 claimant delivers a statement of claim or privilege to the contractor within the period
29 in which it should have been filed. Under those circumstances, which presuppose
30 that no statement of claim or privilege is filed, the period allowed the claimant to
31 bring suit against the contractor and surety is one year from the expiration of the
32 filing period.

33 (e) Subsection C makes clear that the extinguishment of claims and
34 privileges arising under the Private Works Act does not extinguish other rights that
35 the claimant may have, such as contractual rights to payment. Thus, if a general
36 contractor fails to preserve his privilege by filing a statement of privilege within the
37 time provided by R.S. 9:4822(C), or if the general contractor forfeits his right to a
38 privilege by failing to record notice of contract when required by R.S. 9:4811(D), the
39 contractor nevertheless still has a contractual right to payment from the owner who
40 engaged him. A claimant who fails to preserve his rights under the Private Works
41 Act is not, however, entitled to recovery against the owner or contractor under a
42 theory of unjust enrichment. See *JP Mack Industries LLC v. Mosaic Fertilizer, LLC*,
43 970 F. Supp. 2d 516 (E.D. La. 2013).

44 (f) Although Subsections D and E refer to the filing of a surety bond, R.S.
45 9:4835 permits, instead of a bond, the deposit of funds to secure payment of the
46 claims. In light of the provisions of R.S. 9:4835, authorizing the clerk to cancel the
47 privileges upon the giving of such security, the term "bond" in this Section should
48 be construed to include not only a surety bond but also the other forms of security
49 permitted to be given by R.S. 9:4835 in lieu of a bond. As revised, Subsection E

1 provides that a bond or other security posted by either a contractor or a subcontractor
2 relieves the owner of liability for the claim.

3 SUBPART E. FILING; CANCELLATION; PEREMPTION

4 §4831. Filing; place of filing; contents

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

11 B. ~~For purposes of this Part, the recorder of mortgages includes the office of~~
12 ~~the clerk of court and ex officio recorder of mortgages.~~ Each notice of contract,
13 notice of termination of work, affidavit filed in accordance with R.S. 9:4820(C) or
14 4832(C), and other filing by an owner under this Part shall contain a complete
15 property description of the immovable upon which the work is to be or has been
16 performed. Each other filing under this Part shall contain either a complete property
17 description of the immovable or another reasonable identification of the immovable.
18 A statement of the name of the owner and street address or mailing address of the
19 immovable without more shall not be sufficient to meet the requirements of this
20 Subsection.

21 C. ~~Each filing made with the recorder of mortgages pursuant to this Part~~
22 ~~which contains a reference to immovable property shall contain a description of the~~
23 ~~property sufficient to clearly and permanently identify the property. A description~~
24 ~~which includes the lot and/or square and/or subdivision or township and range shall~~
25 ~~meet the requirement of this Subsection. Naming the street or mailing address~~
26 ~~without more shall not be sufficient to meet the requirements of this Subsection. If~~
27 the work is evidenced by a notice of contract that contains a complete property
28 description of the immovable, reference in any subsequent filing to the notice of
29 contract, together with its registry number or other appropriate recordation
30 information, shall be sufficient to meet the requirements of Subsection B of this

1 Section. If the work is evidenced by a notice of contract that contains either a
2 complete property description of the immovable or another reasonable identification
3 of the immovable, reference to the notice of contract, together with its registry
4 number or other appropriate recordation information, shall be deemed a reasonable
5 identification of the immovable in a statement of claim or privilege filed under this
6 Part.

7 D. Reference in a statement of claim or privilege to a notice of contract that
8 does not contain a reasonable identification of the immovable shall not alone be
9 sufficient to preserve the privilege of the claimant against a third person having or
10 acquiring an interest in the immovable but shall nevertheless be sufficient to preserve
11 all rights of the claimant against the owner, the contractor, and his surety.

12 Comments - 2019

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

18 (b) Subsection B clarifies the degree of specificity of property descriptions
19 required in filings made under the Private Works Act. All filings made by the
20 owner, including notices of contract and notices of termination, must contain a
21 complete property description, a term defined in R.S. 9:4810(3). Filings made by
22 other persons, such as statements of claim or privilege filed by claimants, may
23 contain a complete property description but are required to contain only a reasonable
24 identification of the immovable. In neither case, however, is a mere street address
25 sufficient. See *Tee It Up Golf, Inc. v. Bayou State Construction, LLC*, 30 So. 3d
26 1159 (La. App. 3d Cir. 2010); *Boes Iron Works, Inc. v. Spartan Bldg. Corp.*, 648 So.
27 2d 24 (La. App. 4th Cir. 1994); *Norman H. Voelkel Const., Inc. v. Recorder of*
28 *Mortgages for East Baton Rouge Parish*, (La. App. 1st Cir. 2003). A description of
29 the immovable as a designated lot in a properly platted subdivision would ordinarily
30 be sufficient as both a complete property description and a reasonable identification,
31 unless something less than the entire lot that is designated is intended.

32 (c) Subsection C broadens a principle that was previously applicable only to
33 notices of termination under the express wording of the Act. Where a filed notice
34 of contract describes an immovable, a subsequent filing can satisfy the requirement
35 of describing or identifying the immovable by including a reference to the filed
36 notice of contract. If the notice of contract contains a complete property description,
37 this reference satisfies the requirements for either a complete property description
38 or a reasonable identification in the subsequent filing. If, on the other hand, the filed
39 notice of contract contains only a reasonable identification that does not qualify as
40 a complete property description of the immovable, the reference in the subsequent
41 filing will similarly constitute only a reasonable identification of the immovable.

42 (d) Subsection D is new. It provides that a statement of claim or privilege
43 identifying an immovable by reference to a notice of contract that itself does not

1 contain a reasonable identification of the immovable will be insufficient to preserve
2 the claimant's privilege against third persons but will nevertheless suffice to preserve
3 the claimant's rights against the owner, the contractor, and the surety. This rule is
4 intended to prevent an owner from profiting for his own error in failing to describe
5 the immovable properly in the notice of contract.

6 §4832. Cancellation of notice of contract

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

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

13 * * *

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

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

24 * * *

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

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

29 (2) Within four business days after the filing of the request for cancellation,
30 an affidavit made by a qualified inspector is filed to the effect that he inspected the
31 immovable at a specified time subsequent to the filing of the request for cancellation

1 and that work had not then begun, as the beginning of work is defined by R.S.
2 9:4820.

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

5 Comments - 2019

6 (a) Subsections A and B make no substantive change in the law. They
7 provide for cancellation of the notice of contract following the filing of a notice of
8 termination of the work. Erasure of a statement of claim or privilege is regulated by
9 R.S. 9:4833. It is implicit that if a statement of claim or privilege is timely filed but
10 later erased the notice of contract could also be cancelled because the records would
11 then not disclose any statement of claim or privilege filed within the applicable filing
12 period. The erasure or cancellation of a statement of claim or privilege eliminates the
13 statement from the records, and it should then be considered as having never been
14 filed for purposes of cancellation of the notice of contract under this Section.

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

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

38 §4833. Request to cancel the inscription of claims and privileges; cancellation;
39 notice of pendency of action

40 A.(1) If a statement of claim or privilege is improperly filed or if the claim
41 or privilege preserved by the filing of a statement of claim or privilege is
42 extinguished, an owner or other interested person may require the person who ~~has~~
43 filed a the statement of the claim or privilege to give a written request for
44 cancellation in the manner provided by law directing the recorder of mortgages to

1 cancel the statement of claim or privilege from his records. ~~The request shall be~~
2 ~~delivered within ten days after a written request for it is received by the person filing~~
3 ~~the statement of claim or privilege.~~

4 (2) If a statement of claim or privilege identifies an owner who is not liable
5 for the claim under R.S. 9:4806(B), that owner or another interested person may
6 require the person who filed the statement of the claim or privilege to give a written
7 request for cancellation in the manner provided by law directing the recorder of
8 mortgages to cancel the statement of claim or privilege from his records insofar as
9 it affects that owner and his interest in the immovable. Cancellation of the statement
10 of claim and privilege as to an owner in accordance with this Paragraph shall have
11 no effect upon the person's privilege upon the interest of any other owner in the
12 immovable or upon the person's rights against any other owner, contractor, or surety.

13 (3) A request for cancellation required under either Paragraph (1) or (2) of
14 this Subsection shall be delivered within ten days after a written request for it is
15 received by the person filing the statement of claim or privilege.

16 B. One who, without reasonable cause, fails to deliver a written request for
17 cancellation in proper form to cancel the claim or privilege as required by Subsection
18 A of this Section shall be liable for damages suffered by the owner or person
19 requesting the authorization as a ~~consequence~~ result of the failure and for reasonable
20 attorney fees incurred in causing the statement to be cancelled.

21 C. A person who has properly requested a written request for cancellation
22 shall have an action pursuant to R.S. 44:114 against the person required to deliver
23 the written request to obtain a judgment declaring the claim or the privilege
24 extinguished and directing the recorder of mortgages to cancel the statement of claim
25 or privilege if the person required to give the written request fails or refuses to do so
26 within the time required by Subsection A of this Section. If the written request for
27 cancellation was requested under Paragraph (A)(2) of this Section, the judgment
28 shall declare the statement of claim or privilege to be extinguished, and shall direct
29 its cancellation, only insofar as it affects the owner who is entitled to cancellation

1 1st Cir. 1995); *C & J Contractors v. American Bank & Trust Co.*, 559 So. 2d 810
 2 (La. App. 1st Cir. 1990). The lack of a timely filed notice of pendency of action
 3 instead merely makes the privilege ineffective as to third persons. See, e.g., *First*
 4 *National Bank of Commerce v. de la Tour Contractors, Inc.*, 570 So. 2d 239 (La.
 5 App. 4th Cir. 1990). A third person's knowledge of the pendency of an action to
 6 which he is not a party does not obviate the need for a claimant to file a timely notice
 7 of pendency of the action. See *Triangle Pacific Corp.*, supra.

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

13 §4834. Notice of contract; cessation of effect, reinscription

14 The effect of filing a notice of contract ceases five years after it is filed,
 15 unless a written ~~request for~~ notice of its reinscription, in the manner provided for the
 16 reinscription of mortgages, is properly and timely ~~made~~ filed by an interested person
 17 ~~to~~ with the recorder of mortgages in whose office the notice of contract is filed. A
 18 ~~request for~~ notice of reinscription may not be ~~made~~ filed after the effect of the filing
 19 of the notice of the contract has ceased. The effect of reinscription shall cease five
 20 years after the ~~request for~~ notice of reinscription is filed unless a subsequent notice
 21 of reinscription is filed within that time.

22 Comments - 2019

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

27 §4835. Filing of bond or other security; cancellation of statement of claim or
 28 privilege or notice of pendency of action

29 A. If a statement of claim or privilege or a notice of pendency of action is
 30 filed, any interested ~~party~~ person may deposit with the recorder of mortgages either
 31 a bond of a lawful surety company authorized to do business in the state, cash, or
 32 certified funds to guarantee payment of the obligation secured by the privilege or that
 33 portion as may be lawfully due together with interest, costs, and attorney fees to
 34 which the claimant may be entitled up to a total amount of one hundred twenty-five
 35 percent of the principal amount of the claim as asserted in the statement of claim or

1 privilege or ~~such a suit~~ in the action. ~~A surety shall not have the benefit of division~~
2 ~~or discussion.~~

3 * * *

4 C. Any party person who files a bond or other security to guarantee payment
5 of an obligation secured by a privilege in accordance with the provisions of ~~R.S.~~
6 ~~9:4835(A)~~ Subsection A of this Section shall give notice of the filing to the owner
7 ~~of the immovable~~, the holder of the lien privilege, and the contractor ~~of the~~
8 ~~improvements to the immovable by certified mail to the address of the immovable~~
9 ~~or to the lienholder's address in the case of notice to the lienholder.~~

10 Comments - 2019

11 (a) This Section permits any interested person to post a surety bond in order
12 to obtain the cancellation of a statement of claim or privilege or of a subsequent
13 notice of pendency of action. Alternatively, this Section permits an interested person
14 to deposit (i.e. grant a security interest in) cash or certified funds for the same
15 purpose. See *Rimsky v. Currier*, 649 So. 2d 1248 (La. App. 2d Cir. 1995) (holding
16 that the delivery of a cash bond to the clerk of court causes a security interest in the
17 funds to attach and to be perfected by the clerk's possession of the funds). R.S.
18 9:4823(D) and (E) draw a distinction between the effect of a bond or other security
19 provided by an owner and that of a bond or other security provided by a contractor
20 or subcontractor. The former extinguishes only the privilege upon the owner's
21 interest in the immovable, while the latter extinguishes both the privilege and the
22 statutory liability imposed on the owner by R.S. 9:4802.

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

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

30 SUBPART F. ~~PROCEDURE FOR ENFORCEMENT;~~ DELIVERY OF
31 COMMUNICATIONS; ~~BURDEN OF PROOF OF DELIVERY OF MOVABLES~~

32 §4841. Enforcement of claims and privileges; concursus

33 A. After the period provided by R.S. 9:4822 for the filing of statements of
34 claims or privileges has expired, the owner or any other interested party person may
35 convoke a concursus and shall cite all persons who have preserved their claims
36 against the owner or their privileges on the immovable, ~~and shall cite the~~ to establish
37 the validity and rank of their claims and privileges. The owner, the contractor, and

1 the surety shall also be cited if they are not otherwise parties to ~~establish the validity~~
2 ~~and rank of their claims and privileges~~ the concursus.

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

5 C. ~~The~~ Upon motion of the owner, the court shall ~~may by rule~~ order the other
6 parties to the ~~action~~ concursus to show cause why a judgment should not be entered
7 discharging and cancelling their claims and privileges or discharging the owner from
8 further responsibility to them. The ~~rule motion~~ shall be tried and appealed separately
9 ~~from the main cause of action~~ as a summary proceeding and shall be limited to a
10 consideration of the following matters:

11 * * *

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

14 * * *

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

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

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

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

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

9 (2) After ~~answer by or judgment of default against~~ all claimants have
10 answered, or, if any claimant has failed to answer, after expiration of the delay for
11 answering fixed by the court in an order issued under Code of Civil Procedure
12 Article 4657, the surety, upon motion and order may withdraw from the registry of
13 the court any sums so deposited to the extent they exceed one hundred twenty-five
14 percent of the aggregate amount of the claims then asserted against the contractor
15 and surety by such claimants.

16 F. The attorney for the owner, who convokes a concursus under this Section,
17 or the attorney for a claimant or privilege holder who convokes the concursus ~~where~~
18 ~~more than~~ when no other person has done so within ninety days ~~have elapsed from~~
19 ~~the~~ after expiration of the time given by R.S. 9:4822 for claimants or privilege
20 holders to file statements of their ~~claim and such a concursus has not been convoked,~~
21 claims or privileges shall be entitled to recover from the contractor and his surety a
22 reasonable fee for his services in convoking the concursus. The fees awarded may
23 be paid out of the funds deposited into the registry of the court but only after
24 satisfaction of all valid claims and privileges.

25 * * *

26 Comments - 2019

27 (a) Under Subsection A, a concursus can be convoked not only by the owner
28 but by any interested person. Regardless of who initiates the concursus, the owner,
29 contractor, surety, and all claimants who have preserved their claims and privileges
30 must be made parties to it. As Subsection B provides, the owner may, but is not
31 required to, deposit with the court any remaining amounts that he owes to the
32 contractor.

1 (b) The rules of the Code of Civil Procedure supplement this Section, except
2 to the extent of any inconsistency or conflict. *Federal Nat. Bank & Trust Co. v.*
3 *Calsim, Inc.*, 340 So. 2d 611 (La. App. 4th Cir. 1977). The revisions to Subsections
4 C and D are intended primarily to use terminology that the Code of Civil Procedure
5 presently employs. Subsection C allows an owner to file a contradictory motion,
6 which is tried as a summary proceeding. See Code of Civil Procedure Articles 2591
7 through 2596. A suspensive or devolutive appeal may be taken as a matter of right
8 from an order or judgment issued on the motion, without the need for the trial court
9 to designate the order or judgment as a final judgment. See Code of Civil Procedure
10 Article 1915(B).

11 (c) Under Subsections C and D, the owner remains personally liable until he
12 proves that the bond filed with his notice of contract is sufficient. He bears the risk
13 of the insolvency of the surety until his motion under Subsection C is decided.

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

23 §4842. Delivery of notice communications or ~~other documents and materials;~~
24 burden of proof

25 ~~A. A notice~~ Delivery of a communication or document required or permitted
26 by this Part to be given by this Part or delivered is accomplished when the
27 communication or document is received in accordance with R.S. 9:4843 by the
28 person to whom it is sent or when it is deemed to have been given or delivered in
29 accordance with R.S. 9:4844 or 4845. ~~or any document required or permitted to be~~
30 ~~delivered by this Part shall be deemed to have been given or delivered when it is~~
31 ~~delivered to the person entitled to receive it, or when the notice or document is~~
32 ~~properly deposited in the United States mail for delivery by certified or registered~~
33 ~~mail to that person. The mailing may be addressed to an owner, contractor, or surety~~
34 ~~at the address given in a notice of contract or attached bond filed in accordance with~~
35 ~~this Part, or to a claimant at the address given in the statement of claim or privilege~~
36 ~~filed by the claimant or a notice given by the claimant under the provisions of R.S.~~
37 ~~9:4822.~~

38 ~~B. Proof of delivery at the site of the immovable by a claimant asserting a~~
39 ~~claim or privilege under the provisions of R.S. 9:4801(3) or R.S. 9:4802(3) is prima~~

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

4 Comments - 2019

5 (a) This Section and those that follow provide the means of giving or
6 delivering communications under the Private Works Act. It is the intent of these
7 Sections to allow use of modern methods of delivery while at the same time fostering
8 the reliability of communications and preserving the ability of a party to establish
9 that a communication has been effectively delivered. This Section lays the
10 foundation for those that follow: A communication is delivered when it is actually
11 received, as provided in R.S. 9:4843, or when it is deemed given or delivered in
12 accordance with R.S. 9:4844 or 4845.

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

18 §4843. Receipt of communications or documents

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

21 Comments - 2019

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

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

32 §4844. Delivery by mail or commercial courier

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

38 B. A communication or document required or permitted by this Part to be
39 given or delivered shall be deemed to have been given or delivered at the time that

1 it is properly deposited with a commercial courier for delivery to the intended
2 recipient, provided that the communication or document is received by the intended
3 recipient within a reasonable time after such deposit.

4 C. A communication or document may be addressed to an owner, contractor,
5 or surety at the address given in a notice of contract or attached bond filed in
6 accordance with this Part, or to a claimant at the address given in the statement of
7 claim or privilege filed by the claimant under the provisions of this Part.
8 Alternatively, a communication or document may be addressed to an owner,
9 contractor, surety, or claimant at the intended recipient's address designated as an
10 address for notice in any previous communication given by the intended recipient to
11 the sender with respect to the work.

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

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

28 F. As an alternative to any other address permitted by this Section, a
29 communication or document may be addressed to a juridical person that is

1 incorporated, formed, or organized under the laws of this state, or that has registered
2 or obtained a certificate of authority to do business in this state, at the address of the
3 person's registered office in Louisiana or the address of its principal office, principal
4 place of business, or principal business establishment in Louisiana, in each case as
5 reflected on the records of the Louisiana secretary of state.

6 Comments - 2019

7 (a) Subsection A provides that a communication is considered to have been
8 given at the time it is properly deposited in the United States mail for delivery by
9 registered or certified mail. To that extent, Subsection A reproduces a portion of
10 former R.S. 9:4842(A). Subsection A, however, also permits use of any other
11 present or future method of delivery offered by the United States Postal Service, so
12 long as the method includes registry and tracking of the communication or document
13 to be delivered. With any type of mailing permitted by Subsection A, the
14 communication is deemed given at the moment it is properly deposited with the
15 United States Postal Service, and the sender is not required to prove that the intended
16 recipient actually received the communication.

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

24 (c) Subsection B provides that a communication sent through a commercial
25 courier is deemed to have been given at the time that it is properly deposited with the
26 commercial courier for delivery to the intended recipient, but only if the
27 communication is actually received by the intended recipient within a reasonable
28 time. Of course, actual receipt itself constitutes effective notice under R.S. 9:4843,
29 regardless of whether the delivery is made by a commercial courier or someone else.
30 The benefit to be derived from using a commercial courier to make delivery under
31 Subsection B is one of timing: the communication is deemed given at the moment
32 of deposit with the commercial courier, provided that it is actually received within
33 a reasonable period of time. The term "commercial courier" is defined in R.S.
34 9:4810.

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

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

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

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

8 §4845. Delivery by electronic means

9 A communication or document required or permitted by this Part to be given
10 or delivered shall be deemed to have been given or delivered when it is delivered by
11 electronic means to a recipient who has consented to that method of delivery of
12 communications or documents related to the work. Delivery by electronic means is
13 accomplished when any of the following occurs:

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

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

22 (3) The communication or document enters an electronic information
23 processing system designated or used by the recipient for purposes of receiving
24 communications or documents related to the work, and the communication or
25 document is deemed to have been received by the recipient in accordance with R.S.
26 9:2615.

27 Comments - 2019

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

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

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

11 §4846. Proof of delivery of movables; prima facie evidence

12 Proof of delivery of movables at the site of the immovable by a claimant
13 asserting a claim or privilege under R.S. 9:4801(3) or 4802(A)(3) is prima facie
14 evidence that the movables became component parts of the immovable, or were used
15 on the immovable, or in machinery or equipment used at the site of the immovable
16 in performing the work.

17 Comments - 2019

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

23 * * *

24 §4852. Notice

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

29 NOTICE OF LIEN RIGHTS

30 Delivered this _____ day of _____, 20____, by _____,
31 Contractor.

32 I, ~~the undersigned~~ owner of residential property located at _____ (street
33 address) _____ in the city of _____, parish of _____,
34 Louisiana, ~~acknowledge that the abovenamed contractor has delivered this notice to~~
35 ~~me, the receipt of which is accepted, signifying my understanding that said~~

1 contractor is about to begin improving my residential property according to the terms
2 and conditions of a contract, and that in accordance with the provisions of law in Part
3 I of Chapter 2 of Code Title XXI of Title 9 of the Louisiana Revised Statutes of
4 1950, R.S. 9:4801, et seq.:

5 (1) ~~A right to file a lien against my property and improvements is granted to~~
6 ~~every contractor, subcontractor, architect, engineer, surveyor, mechanic, cartman,~~
7 ~~truckman, workman, laborer, or furnisher of material, machinery or fixtures, who~~
8 ~~performs work or furnishes material for the improvement or repair of my property,~~
9 ~~for the payment in principal and interest of such work or labor performed, or the~~
10 ~~materials, machinery or fixtures furnished, and for the cost of recording such~~
11 ~~privilege.~~

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

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

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

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

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

5 ~~The above named parties shall have a lien and privilege upon the building,~~
6 ~~improvement or other work erected, and upon the lot of ground not exceeding one~~
7 ~~acre, upon which the building, improvement or other work shall be erected;~~
8 ~~provided, that such lot of ground belongs to the person having such building,~~
9 ~~improvement or other work erected; and if such building, improvement or other work~~
10 ~~is caused to be erected by a lessee of the lot of ground, in that case the privilege shall~~
11 ~~exist only against the lease and shall not affect the owner.~~

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

16 * * *

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

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

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

1 Art. 3269. Order of payment out of immovables; distribution of loss among
2 mortgage creditors

3 With the exception of special privileges, ~~which that~~ exist on immovables in
4 favor of ~~the vendor, of workmen and furnishers of materials~~ vendors and other
5 creditors, as declared above, the debts privileged on the movables and immovables
6 generally; ought to be paid, if the movables are insufficient, out of the product of the
7 immovables belonging to the debtor, in preference to all other privileged and
8 mortgage creditors.

9 The loss which may then result from their payment must be borne by the
10 creditor whose mortgage is the least ancient, and so in succession, ascending
11 according to the order of the mortgages, or by pro rata contributions where two or
12 more mortgages have the same date.

13 * * *

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

15 No privilege shall have effect against third persons, unless recorded in the
16 manner required by law in the parish where the property to be affected is situated.
17 It shall confer no preference on the creditor who holds it, over creditors who have
18 acquired a mortgage, unless the act or other evidence of the debt is recorded within
19 seven days from the date of the act or obligation of indebtedness when the registry
20 is required to be made in the parish where the act was passed or the indebtedness
21 originated and within fifteen days, if the registry is required to be made in any other
22 parish of this State. It shall, however, have effect against all parties from date of
23 registry.

24 The provisions of this Article are subject to exceptions provided by
25 legislation.

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

28 Section 4. The Louisiana State Law Institute is hereby directed to transfer and
29 redesignate R.S. 9:4814, 4815, and 4822(M) as Subpart H of Part I of Chapter 2 of Code

1 Title XXI of Title 9 of the Louisiana Revised Statutes of 1950, entitled:
2 MISAPPLICATION OF PROCEEDS; RETAINAGE. This redesignation is neither an
3 amendment to nor a reenactment of these Sections.

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

8 Section 6. Except as otherwise provided in Sections 7 through 9, this Act shall be
9 effective on January 1, 2020, and shall apply to all works begun on or after that date, other
10 than those works for which notice of contract is filed in accordance with R.S. 9:4811 prior
11 to that date. For purposes of this Section, a work is begun as provided in R.S. 9:4820(A)(2),
12 as amended by this Act.

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

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

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

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

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

9 Section 8. The amendments to R.S. 9:4821 shall be applied retroactively to all
10 works, including those begun, and those for which notice of contract was filed, prior to
11 January 1, 2020, except to the extent such application would cause the divestiture of vested
12 rights.

13 Section 9. The amendments to R.S. 9:4833 shall apply retroactively to all works,
14 including those begun, and those for which notice of contract was filed, prior to January 1,
15 2020.

16 Section 10. This Act does not affect an action, case, or proceeding commenced
17 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 Original

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.

Proposed law (R.S. 9:4805) provides that owners or contractors may request statements of amounts owed from claimants who have no direct contractual relationship with them. Proposed law further provides for the contents of these requests, the circumstances under which responses to these requests must be given and the contents thereof, and the effect of failing to properly respond to a request.

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 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, 4805, 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))