

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(D) and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 affidavits, and notice of pendency of action; to provide for cancellation and
2 effectiveness of notice of contract and cancellation of statements of claims or
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(D) and (E), 4820, 4821, 4822, 4823(A), (B), (C), (E), and (F), 4831,
12 4832(A)(introductory paragraph) and (1) and (B)(introductory paragraph) and (1), 4833(A),
13 (B), (C), and (E), 4834, 4835(A) and (C), the heading of Subpart F of Part I of Chapter 2 of
14 Code Title XXI of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950,
15 4841(A), (B), (C)(introductory paragraph) and (3), (D), (E), and (F), 4842, and 4852(A) are
16 hereby amended and reenacted, and R.S. 9:4803(C) and (D), 4804, 4809, 4810, 4813(F),
17 4832(C) and (D), 4843, 4844, 4845, and 4846 are hereby enacted to read as follows:

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

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

21 * * *

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

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

5 Comments - 2019

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

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

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

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

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

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

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

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

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

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

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

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

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

38 * * *

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

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

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

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

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

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

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

19 * * *

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

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

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

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

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

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

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

1 §4803. Amounts secured by claims and privileges

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

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

7 * * *

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

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

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

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

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

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

26 Comments - 2019

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

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

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

17 §4804. Notices required of certain claimants

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

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

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

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

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

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

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

47 SUBPART B. DEFINITIONS

48 §4806. Owner defined; interest affected

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

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

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

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

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

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

28 Comments - 2019
29

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

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

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

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

4 * * *
5 Comments - 2019

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

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

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

23 §4808. Work defined

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

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

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

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

6 D. This Part does not apply to:

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

10 * * *

11 Comments - 2019

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

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

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

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

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

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

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

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

4 §4809. Substantial completion and abandonment of work defined

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

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

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

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

17 Comments - 2019

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

23 §4810. Miscellaneous definitions

24 For purposes of this Part:

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

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

1 *Works, Inc. v. Spartan Bldg Corp.*, 648 So. 2d 24 (La. App. 4th Cir. 1994); *Norman*
2 *H. Voelkel Const., Inc. v. Recorder of Mortgages for East Baton Rouge Parish*, (La.
3 App. 1st Cir. 2003).

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

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

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

32 **SUBPART C. WORK PERFORMED BY GENERAL CONTRACTORS**

33 §4811. Notice of a contract with a general contractor to be filed

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

37 * * *

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

41 * * *

42 B. A notice of contract is not improperly filed because of an error in or
43 omission from the notice in the absence of a showing of actual prejudice by a

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1 claimant or other person acquiring rights in the immovable. An error in or omission
 2 of the identity of the parties or their mailing addresses or the improper ~~identification~~
 3 or insufficient description of the immovable shall be prima facie proof of actual
 4 prejudice.

5 * * *

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

12 * * *

13 Comments - 2019

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

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

25 (c) As Subsection B provides, an error or omission in a notice of contract
 26 does not cause it to be improperly filed in the absence of actual prejudice to a
 27 claimant or third person, but an inaccurate or insufficient identification of the parties
 28 or the immovable constitutes prima facie evidence of actual prejudice. Cf.
 29 *Thompson Tree & Spraying Service, Inc. v. White-Spinner Construction, Inc.*, 68 So.
 30 3d 1142 (La. App. 3d Cir 2011), writ denied, 71 So. 3d 290 (La. 2011) (holding that
 31 the omission of a property description in a notice of contract did not cause it to be
 32 improperly filed, in the absence of prejudice by the claimant, though the same
 33 omission in a filed notice of termination was held to make it deficient) with *Norman*
 34 *H. Voelkel Const., Inc. v. Recorder of Mortgages for East Baton Rouge*, 859 So. 2d
 35 9 (La. App. 1st Cir. 2003) (holding that an insufficient property description in a filed
 36 notice of contract caused it to be improperly filed in the absence of proof by the
 37 claimant sufficient to rebut the presumption of actual prejudice).
 38

39 (d) Filing of a notice of contract serves as notice of the potential existence
 40 of Private Works Act privileges and fixes the date on which they become effective
 41 against third persons and, by extension, their ranking against other encumbrances.
 42 See R.S. 9:4820 and 4821. The filing of a notice of contract has other effects as
 43 well, such as determining the length of the period permitted for filing statements of

1 claim or privilege following completion of the work and when the delays for such
 2 filings will commence to run. See R.S. 9:4822. The absence of a bond does not
 3 affect these issues, and for that reason Subsection C provides that the lack of a bond
 4 does not cause the notice of contract to be improperly filed. Nevertheless, a notice
 5 of contract filed without a bond attached, though effective for those purposes, will
 6 not satisfy the requirements of R.S. 9:4802(C) and accordingly will not insulate the
 7 owner from claims and privileges arising under R.S. 9:4802.

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

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

30 §4812. Bond required; terms and conditions

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

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

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

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

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

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

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

31 §4813. Liability of the surety

32 * * *

33 D. An action shall not be brought against a surety, other than by the owner,
 34 before the expiration of the time specified by R.S. 9:4822 for claimants to file
 35 statements of their claims or privileges, unless a statement of the claim or privilege
 36 in the form required by R.S. ~~9:4822(G)~~ 9:4822(H) is delivered to the surety at least
 37 thirty days prior to the institution of the action.

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

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

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

10 SUBPART D. CLAIMS AND PRIVILEGES; EFFECTIVENESS;

11 PRESERVATION; RANKING; EXTINGUISHMENT

12 §4820. Privileges; effective date

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

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

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

30 B.(1) If ~~the~~ work for which notice of contract was not filed as required by
31 R.S. 9:4811 is for the addition, modification, or repair of an existing building or
32 other construction, the suspension of the work for thirty days or more shall cause that

1 part of the work performed before ~~a third person's rights become effective shall the~~
2 suspension to be considered, for the purposes of ~~R.S. 9:4821~~ ranking privileges
3 arising under this Part against the rights of third persons, ~~be considered a distinct~~
4 separate work from the work performed after such rights become effective thereafter.
5 A work is suspended if the cost of the work done, in labor and materials, is less than
6 one hundred dollars during ~~the thirty-day~~ a period of thirty days or more immediately
7 preceding the time such third person's rights become effective as to third persons.

8 (2) A privilege arising under this Part with respect to work performed before
9 the suspension, other than a privilege arising under R.S. 9:4801(2) or a privilege
10 securing a claim arising under R.S. 9:4802(A)(2), retains its priority under R.S.
11 9:4821 over the rights of third persons acquired prior to the resumption of work only
12 if the claimant having the privilege files a statement of claim or privilege no later
13 than sixty days after the commencement of the suspension.

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

1 affidavit shall be responsible for any loss or damage suffered by any person whose
2 rights are adversely affected.

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

13 E. If, following cancellation of a notice of contract in accordance with R.S.
14 9:4832(C), another notice of contract is filed, the date of the later filing shall be the
15 date of filing of notice of contract for purposes of this Section.

16 Comments - 2019

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

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

37 (c) As its introductory clause indicates, the basic rule stated in Subsection
38 A is itself subject to exceptions found in other provisions of the Act. One such
39 exception appears in Subsection D, which restates, with some modification, a rule
40 previously provided in former R.S. 9:4822(D)(1)(b). Under Subsection D, privileges

1 arising under R.S. 9:4801(5) and those securing a claim arising under R.S.
 2 9:4802(A)(5) are not effective as to third persons until a statement of claim or
 3 privilege is filed. See *G.R.W. Engineers, Inc. v. Elam*, 557 So. 2d 725 (La. App. 2d
 4 Cir. 1990); *C & J Contractors v. American Bank & Trust Co.*, 559 So. 2d 810 (La.
 5 App. 1st Cir. 1990). A similar exception applies to privileges arising from
 6 preliminary site work. See R.S. 9:4808(C).

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

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

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

1 correctness of the facts recited in a timely filed affidavit may not be controverted to
2 affect the priority of the rights of the person obtaining the affidavit in the absence of
3 proof of fraud by that person.

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

7 §4821. Ranking of privileges arising under this Part

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

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

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

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

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

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

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

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

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

11 (2) Each privilege granted by this Part other than those arising under R.S.
12 9:4801(2) and those securing a claim arising under R.S. 9:4802(A)(2) is inferior to
13 bona fide mortgages and vendor's privileges that are effective as to third persons
14 before the privilege granted by this Part becomes effective as to third persons.

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

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

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

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

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

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

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

43 (g) Subsection D is new. It is necessitated by the definition of the term
44 "immovable" in the 2019 revision of the Act to include not only land and buildings
45 but also other constructions that are permanently attached to the ground, even when
46 those other constructions belong to someone who is not the owner of the ground.
47 See R.S. 9:4810(4). This definition of the term "immovable" will cause Private
48 Works Act privileges to encumber those other constructions, despite their
49 classification as movables under property law. Because they are movables, it is
50 possible that they may be subject to security interests created and perfected under
51 Chapter 9 of the Uniform Commercial Code, perhaps even by a filing in another
52 jurisdiction. Subsection D supplies the needed ranking rule: A Private Works Act
53 privilege is inferior to those conflicting Chapter 9 security interests that were
54 perfected before the privilege became effective against third persons or that are later

1 perfected by a financing statement that was filed before the privilege became
 2 effective against third persons. This allows Chapter 9 security interests to continue
 3 to benefit from the "first-to-file-or-perfect" priority rule that is generally applicable
 4 under Chapter 9. See R.S. 10:9-322(a)(1). The date of filing of the statement of
 5 claim or privilege filed to preserve the Private Works Act privilege is, however,
 6 irrelevant. A similar priority rule appears in the statute ranking Chapter 9 security
 7 interests against privileges for labor, services, or supplies provided in connection
 8 with oil, gas, and water wells. See R.S. 9:4870(B)(3).

9 §4822. Preservation of claims and privileges

10 A. Except as otherwise provided in Subsections B, C, and D of this Section,
 11 a person granted a privilege under R.S. 9:4801 or a claim and privilege under R.S.
 12 9:4802 shall file a statement of his claim or privilege no later than sixty days after:

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

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

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

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

24 (2) ~~Deliver to the owner a copy of the statement of claim or privilege. If the~~
 25 ~~address of the owner is not given in the notice of contract, the claimant is not~~
 26 ~~required to deliver a copy of his statement to the owner. Six months after the~~
 27 ~~substantial completion or abandonment of the work, if a notice of termination is not~~
 28 ~~filed.~~

29 ~~B.C.~~ A general contractor to whom a privilege is granted by R.S. 9:4801 ~~of~~
 30 ~~this Part~~, and whose privilege has been preserved in the manner provided by R.S.
 31 9:4811, shall file a statement of his privilege ~~within sixty days after the filing of the~~
 32 ~~notice of termination or substantial completion of the work. no later than:~~

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

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

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

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

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

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

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

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

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

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

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

27 D. If, before expiration of the period provided in Subsection A of this
28 Section, a person granted a claim and privilege under R.S. 9:4802 in connection with
29 a residential work for which a timely notice of contract was not filed gives notice of

1 nonpayment to the owner, setting forth the amount and nature of the obligation
2 giving rise to the claim and privilege, then the period allowed for the person to file
3 a statement of claim and privilege with respect to the amounts stated in the notice
4 shall not expire until the later of the following occurs:

5 (1) The expiration of the period provided in Subsection A of this Section.
6 (2)(a) The expiration of ten days after the notice is given.
7 (b) The claim and privilege filed pursuant to this Paragraph shall not be filed
8 until at least seven days have lapsed since delivery of notice.

9 E. A notice of termination of the work:

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

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

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

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

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

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

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

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

1 F. If the work has been substantially completed or has been abandoned by
2 the owner, the owner shall file a notice of termination of the work no later than ten
3 days after receipt of a request for its filing from the general contractor. If the owner
4 fails to do so, the general contractor may institute a summary proceeding against him
5 for a judgment decreeing that the work has been substantially completed or has been
6 abandoned by the owner. Provided that the judgment contains the information
7 required by Paragraph (E)(1) of this Section and identifies the owner, it shall have
8 the effect of a notice of termination of the work from the time of its filing in the
9 mortgage records.

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

24 ~~G.~~ H. A statement of a claim or privilege:

25 (1) Shall be in writing.

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

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

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

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

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

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

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

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

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

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

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

3 J. If a person granted a claim and privilege under R.S. 9:4802 has given to
4 an owner a notice complying with Subsection I of this Section, the owner shall notify
5 that person within ten days after the substantial completion or abandonment of the
6 work or the filing of notice of termination of the work. If the owner does not do so
7 and if the person fails to file a statement of claim or privilege within the period
8 provided by this Section, the failure shall not extinguish the person's claim against
9 the owner granted by R.S. 9:4802(A), and the claim shall remain enforceable against
10 the owner provided that an action for its enforcement is brought no later than one
11 year after the expiration of that period. Nevertheless, the privilege arising in favor
12 of the person under R.S. 9:4802(B) shall be extinguished by his failure to file a
13 timely statement of claim or privilege, regardless of whether the owner has failed to
14 give him notice when required under this Subsection.

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

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

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

1 of termination, or, if no notice of termination is filed, no later than six months after
2 the substantial completion or abandonment of the work. Within the same periods,
3 the claimant must deliver a copy of the statement of claim or privilege to the owner,
4 if the owner's address is given in the filed notice of contract. The thirty-day period
5 is consistent with prior law. The six-month period is new and is intended, in the
6 interest of stability of title to immovables, to alter the former rule that the period for
7 filing statements of claim or privilege in connection with a work for which notice of
8 contract had been filed did not commence to run until notice of termination was
9 filed. See *Thompson Tree & Spraying Service, Inc. v. White-Spunner Construction,*
10 *Inc.*, 68 So. 3d 1142 (La. App. 3d Cir 2011), writ denied 71 So. 3d 290 (La. 2011);
11 *Bernard Lumber Company, Inc. v. Lake Forest Construction Co., Inc.*, 572 So. 2d
12 178 (La. App. 1st Cir. 1991). It should be recognized, however, that the new
13 six-month period is by no means a lengthening of the period permitted for filing
14 statements of claim or privilege. It is, instead, the imposition of an outside deadline
15 where none previously existed. If Subsection B applies, a statement of claim or
16 privilege filed more than thirty days after the filing of notice of termination is
17 untimely. If Subsection B applies and no notice of termination is filed, the period
18 for filing statements of claim or privilege will nevertheless expire six months after
19 substantial completion or abandonment of the work, and a statement of claim or
20 privilege filed later than that will be untimely.

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

34 (e) Subsection C, which corresponds to Subsection B of the former
35 provision, provides the period within which general contractors must file statements
36 of privilege. Subsection C applies by its terms regardless of whether notice of
37 contract is filed, but a general contractor under a contract for more than \$100,000
38 will not be entitled to file a statement of privilege at all unless he has caused notice
39 of contract to be timely filed. See R.S. 9:4811(D). As under former law, the general
40 contractor ordinarily must file a statement of privilege no later than sixty days after
41 the filing of a notice of termination. The contractor can shorten this period by
42 acquiescing in the cancellation of the notice of contract. See R.S. 9:4832(A).
43 Subsection C makes clear that the sixty-day period runs from the filing of notice of
44 termination, not from substantial completion or abandonment of the work. See
45 *Golden Nugget Lake Charles, L.L.C. v. W. G. Yates & Sons Construction Company,*
46 850 F.3d 231 (5th Cir. 2017). If, however, no notice of termination is filed,
47 Subsection C now requires that the contractor file his statement of privilege no later
48 than seven months after the substantial completion or abandonment of the work. The
49 sixty-day and seven-month periods are intended to grant the general contractor
50 additional time to file following the expiration of the period that applies to claimants
51 subject to Subsection B. As with the six-month period imposed by Subsection B, the
52 seven-month period in Subsection C is not a lengthening of the period allowed to a
53 general contractor to file his statement of privilege but rather represents the
54 imposition of an outside deadline that applies if no notice of termination is filed.

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

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

18 (h) Paragraph (D)(4) makes the owner's good faith the test of the validity of
19 a notice of termination but does not attempt to specifically regulate the question of
20 what happens if the notice is filed in bad faith. Because the filing periods of this
21 Section do not expressly depend upon whether the notice of termination is filed in
22 good faith, a notice of termination filed in bad faith should have effect if the rights
23 of third persons (such as a person who acquires a mortgage after the apparent filing
24 period has expired) are involved. At the same time, because a person ordinarily
25 cannot assert his own misconduct as a defense, a notice of termination filed in bad
26 faith should be ineffective as to the owner himself. Paragraph (D)(4) has been
27 revised to provide that the conclusive presumption of correctness arising from the
28 filing of a notice of termination is limited in its effect to the purposes of the Act
29 itself. A unilateral statement made by an owner in a notice of termination that the
30 general contractor defaulted, even if the statement is made in good faith, should not
31 be given conclusive effect in litigation over that issue between the owner and general
32 contractor.

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

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

1 (k) Subsection G specifies the information that is required to be contained
2 in a claimant's statement of claim or privilege. It largely continues existing law,
3 including the rule that a statement of claim or privilege need contain only a
4 reasonable identification of the immovable rather than a complete property
5 description. A statement of the street address of the immovable without more is not
6 a sufficient identification. See R.S. 9:4831(B). There is no requirement that a
7 statement of claim or privilege be executed by authentic act, be acknowledged before
8 a notary, or take the form of a sworn affidavit. Paragraph (G)(5), which is new, is
9 intended to assist a claimant in reciting the name of the "owner" in his statement of
10 claim or privilege when the owner who is responsible for the claim (such as a lessee
11 under an unrecorded lease) does not have an interest that appears of record. Under
12 those circumstances, the statement of claim or privilege may instead identify the
13 person who appears of record to own the immovable. Naming such a person in the
14 statement of claim or privilege also increases the likelihood that persons searching
15 the mortgage records will be able to find the statement of claim or privilege through
16 reasonable efforts. Nevertheless, inclusion of the name of an owner who has no
17 responsibility for the claim, even when authorized by Subsection G, does not create
18 a privilege on that owner's interest in the immovable. See R.S. 9:4806(E).

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

26
27 (l) Subsections H and I, which replace former Subsections K and L, provide
28 a mechanism by which a claimant granted a claim and privilege under R.S. 9:4802
29 can request notice from the owner of the substantial completion or abandonment of
30 the work or of the filing of notice of termination of the work. Those events all
31 potentially start the running of the delays within which the claimant must file in
32 order to preserve his claim and privilege. The former provision allowed a claimant
33 to request notice, but the remedy that it provided (recovery of attorney fees without
34 preservation of the claimant's claim against the non-complying owner) was wholly
35 unsuited to address the harm the claimant might suffer if the owner failed to comply
36 with the request. See *Buck Town Contractors & Co. v. K-Belle Consultants, LLC*,
37 216 So. 3d 981 (La. App. 4th Cir. 2016); *Byron Montz, Inc. v. Conco Construction,*
38 *Inc.*, 824 So. 2d 498 (La. App. 4th Cir. 2002). Under revised Subsection I, if an
39 owner does not comply with a claimant's request under Subsection H for notice of
40 the substantial completion or abandonment of the work or of the filing of notice of
41 termination of the work, the claimant's failure to file a timely statement of claim or
42 privilege does not cause the loss of his claim against the owner under R.S.
43 9:4802(A). Nevertheless, the claimant's privilege under R.S. 9:4802(B) will be
44 extinguished by his failure to file. The claimant's rights against the contractor and
45 surety will also be extinguished by the claimant's failure to file a statement of claim
46 or privilege, unless the claimant preserves his rights against them by delivering to
47 the contractor a timely statement of claim or privilege under R.S. 9:4823(B).

48 (m) The rule of former Paragraph (D)(1) that privileges arising under R.S.
49 9:4801(5) and those securing a claim arising under R.S. 9:4802(A)(5) are not
50 effective as to third persons until the time of filing of the statement of claim or
51 privilege now appears in R.S. 9:4820(D).

52 (n) The requirement under former Paragraph (D)(2) that an unpaid seller of
53 movables sold for use in a residential work deliver notice of nonpayment to the
54 owner at least ten days before filing a statement of his claim or privilege has been
55 eliminated, and the special seventy-day period previously allowed such a seller to

1 file his statement of claim or privilege has also been suppressed in favor of the
2 period that is applicable under Subsection A or B.

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

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

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

11 §4823. Extinguishment of claims and privileges

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

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

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

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

21 B. ~~A~~ Notwithstanding Subsection A of this Section, a claim against a
22 contractor granted by R.S. 9:4802 is not extinguished by the failure to file a
23 statement of claim or privilege as required by R.S. 9:4822 if a statement of the claim
24 or privilege is delivered to the contractor within the period allowed for its filing by
25 R.S. 9:4822. The failure to file an action against the owner as required by ~~R.S.~~
26 ~~9:4823(A)(2)~~ Paragraph (A)(2) of this Section shall not extinguish a claim against
27 a contractor or his surety if an action for the enforcement of the claim is instituted
28 against the contractor or his surety ~~within~~ no later than one year after the expiration
29 of the time given by R.S. 9:4822 for filing the statement of claim or privilege to
30 preserve it.

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

4 * * *

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

8 F. In a concursus proceeding brought under R.S. 9:4841, the joinder of the
 9 owner and a person who has a privilege or a claim against the owner, or the joinder
 10 of the contractor or surety and a person who has a claim against the contractor,
 11 constitutes the institution of an action for the enforcement of the claim or privilege
 12 against the owner, contractor, or surety₂ as the case may be.

13 Comments - 2019

14 (a) This Section requires the timely filing of statements to preserve claims
 15 and privileges arising under the Private Works Act and the institution of suits for
 16 their enforcement. The effect of failing to take the required action results in the
 17 extinguishment of those claims and privileges. Under Subsection A, action taken to
 18 preserve the claim against the owner also prevents its extinguishment against the
 19 contractor or surety. Providing for the extinguishment of rights against the
 20 contractor and surety when the claim has been preserved against the owner would
 21 be pointless in light of the owner's rights of indemnity from the contractor. See R.S.
 22 9:4802(F).

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

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

35 (d) Subsection B provides that the extinction of the claim against the owner
 36 will not necessarily extinguish the statutory claim against the contractor, if the
 37 claimant delivers a statement of claim or privilege to the contractor within the period
 38 in which it should have been filed. Under those circumstances, which presuppose
 39 that no statement of claim or privilege is filed, the period allowed the claimant to
 40 bring suit against the contractor and surety is one year from the expiration of the
 41 filing period.

1 (e) Subsection C makes clear that the extinguishment of claims and
2 privileges arising under the Private Works Act does not extinguish other rights that
3 the claimant may have, such as contractual rights to payment. Thus, if a general
4 contractor fails to preserve his privilege by filing a statement of privilege within the
5 time provided by R.S. 9:4822(C), or if the general contractor forfeits his right to a
6 privilege by failing to record notice of contract when required by R.S. 9:4811(D), the
7 contractor nevertheless still has a contractual right to payment from the owner who
8 engaged him. A claimant who fails to preserve his rights under the Private Works
9 Act is not, however, entitled to recovery against the owner or contractor under a
10 theory of unjust enrichment. See *JP Mack Industries LLC v. Mosaic Fertilizer, LLC*,
11 970 F. Supp. 2d 516 (E.D. La. 2013).

12 (f) Although Subsections D and E refer to the filing of a surety bond, R.S.
13 9:4835 permits, instead of a bond, the deposit of funds to secure payment of the
14 claims. In light of the provisions of R.S. 9:4835, authorizing the clerk to cancel the
15 privileges upon the giving of such security, the term "bond" in this Section should
16 be construed to include not only a surety bond but also the other forms of security
17 permitted to be given by R.S. 9:4835 in lieu of a bond. As revised, Subsection E
18 provides that a bond or other security posted by either a contractor or a subcontractor
19 relieves the owner of liability for the claim.

20 SUBPART E. FILING; CANCELLATION; PEREMPTION

21 §4831. Filing; place of filing; contents

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

28 B. ~~For purposes of this Part, the recorder of mortgages includes the office of~~
29 ~~the clerk of court and ex officio recorder of mortgages.~~ Each notice of contract,
30 notice of termination of work, affidavit filed in accordance with R.S. 9:4820(C) or
31 4832(C), and other filing by an owner under this Part shall contain a complete
32 property description of the immovable upon which the work is to be or has been
33 performed. Each other filing under this Part shall contain either a complete property
34 description of the immovable or another reasonable identification of the immovable.
35 A statement of the name of the owner and street address or mailing address of the
36 immovable without more shall not be sufficient to meet the requirements of this
37 Subsection.

1 1159 (La. App. 3d Cir. 2010); *Boes Iron Works, Inc. v. Spartan Bldg. Corp.*, 648 So.
 2 2d 24 (La. App. 4th Cir. 1994); *Norman H. Voelkel Const., Inc. v. Recorder of*
 3 *Mortgages for East Baton Rouge Parish*, (La. App. 1st Cir. 2003). A description of
 4 the immovable as a designated lot in a properly platted subdivision would ordinarily
 5 be sufficient as both a complete property description and a reasonable identification,
 6 unless something less than the entire lot that is designated is intended.

7 (c) Subsection C broadens a principle that was previously applicable only to
 8 notices of termination under the express wording of the Act. Where a filed notice
 9 of contract describes an immovable, a subsequent filing can satisfy the requirement
 10 of describing or identifying the immovable by including a reference to the filed
 11 notice of contract. If the notice of contract contains a complete property description,
 12 this reference satisfies the requirements for either a complete property description
 13 or a reasonable identification in the subsequent filing. If, on the other hand, the filed
 14 notice of contract contains only a reasonable identification that does not qualify as
 15 a complete property description of the immovable, the reference in the subsequent
 16 filing will similarly constitute only a reasonable identification of the immovable.

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

24 §4832. Cancellation of notice of contract

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

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

31 * * *

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

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

4 * * *

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

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

9 (2) Within four business days after the filing of the request for cancellation,
10 an affidavit made by a qualified inspector is filed to the effect that he inspected the
11 immovable at a specified time subsequent to the filing of the request for cancellation
12 and that work had not then begun, as the beginning of work is defined by R.S.
13 9:4820.

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

16 Comments - 2019

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

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

37 (c) Subsection D provides that a notice of contract that is cancelled under
38 Subsection C has no effect, and R.S. 9:4820(E) provides that the date of filing of a
39 subsequent notice of contract is considered to be the date of filing of notice of
40 contract for purposes of R.S. 9:4820(A)(1). This does not necessarily mean,

1 however, that Private Works Act privileges will take effect as to third persons from
2 the date of filing of the second notice of contract. If, contrary to the factual
3 allegations of the affidavit filed to obtain cancellation of the first notice of contract
4 under Subsection C, work had in fact begun before the request was made for
5 cancellation of that contract, or if work in fact begins at any other time before the
6 filing of the second notice of contract, the date that work actually began will be the
7 date that Private Works Act privileges arising from the work are effective as to third
8 persons. See R.S. 9:4820(A)(2).

9 §4833. Request to cancel the inscription of claims and privileges; cancellation;
10 notice of pendency of action

11 A.(1) If a statement of claim or privilege is improperly filed or if the claim
12 or privilege preserved by the filing of a statement of claim or privilege is
13 extinguished, an owner or other interested person may require the person who ~~has~~
14 filed a the statement of the claim or privilege to give a written request for
15 cancellation in the manner provided by law directing the recorder of mortgages to
16 cancel the statement of claim or privilege from his records. ~~The request shall be~~
17 ~~delivered within ten days after a written request for it is received by the person filing~~
18 ~~the statement of claim or privilege.~~

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

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

31 B. One who, without reasonable cause, fails to deliver a written request for
32 cancellation in proper form to cancel the claim or privilege as required by Subsection
33 A of this Section shall be liable for damages suffered by the owner or person

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

1 requesting the authorization as a ~~consequence~~ result of the failure and for reasonable
2 attorney fees incurred in causing the statement to be cancelled.

3 C. A person who has properly requested a written request for cancellation
4 shall have an action pursuant to R.S. 44:114 against the person required to deliver
5 the written request to obtain a judgment declaring the claim or the privilege
6 extinguished and directing the recorder of mortgages to cancel the statement of claim
7 or privilege if the person required to give the written request fails or refuses to do so
8 within the time required by Subsection A of this Section. If the written request for
9 cancellation was requested under Paragraph (A)(2) of this Section, the judgment
10 shall declare the statement of claim or privilege to be extinguished, and shall direct
11 its cancellation, only insofar as it affects the owner who is entitled to cancellation
12 and his interest in the immovable. The plaintiff may also seek recovery of the
13 damages and attorney fees to which he may be entitled under this Section.

14 * * *

15 E. The effect of ~~filing for~~ recordation of a statement of claim or privilege and
16 the privilege preserved by it shall cease as to third persons unless a notice of
17 pendency of action in accordance with ~~Article 3752 of the~~ Code of Civil Procedure
18 Article 3752, identifying the suit required to be filed by R.S. 9:4823, is filed within
19 one year after the date of filing the statement of claim or privilege. In addition to the
20 requirements of ~~Article 3752 of the~~ Code of Civil Procedure Article 3752, the notice
21 of pendency of action shall contain ~~a reference to the notice of contract, if one is~~
22 ~~filed, or a reference to the recorded statement of claim or privilege if a notice of~~
23 ~~contract is not filed.~~ If the effect of recordation of a statement of claim or privilege
24 has ceased for lack of timely filing of a notice of pendency of action, the recorder of
25 mortgages upon receipt of a written signed application shall cancel the recordation
26 of the statement of claim or privilege.

27 Comments - 2019

28 (a) Paragraph (A)(1) makes no change in the law. Many construction
29 projects contemplate or are dependent upon financing arrangements, leases, or
30 conveyances that are to be consummated shortly after completion of the work.
31 Paragraph (A)(1) is designed to discourage the filing of a claim that is unjustified,

1 late, or otherwise made without reasonable cause for believing it is valid in the hope
2 that economic pressure may be placed upon the owner or contractor to extract a
3 settlement or other payment as the price of a release.

4 (b) Paragraph (A)(2) is new. It provides a mechanism for partial cancellation
5 of a statement of claim or privilege insofar as it purports to affect an owner who has
6 no responsibility for the claim. An owner who is not responsible might be named
7 improperly in a statement of claim or privilege for a variety of reasons, including the
8 claimant's error of law or fact or even his bad faith. An owner who has no
9 responsibility might be properly named in a statement of claim or privilege because
10 the owner who does have responsibility has no interest of record in the immovable.
11 See R.S. 9:4822(G)(5). Under either circumstance, Paragraph (A)(2) provides a
12 mechanism for the owner who has no responsibility to obtain a cancellation of the
13 statement of claim or privilege insofar as it affects him or his interest in the
14 immovable. As Paragraph (A)(2) expressly provides, the cancellation does not affect
15 the claimant's rights against any other owner or against the contractor or surety.

16 (c) A notice of pendency of action filed in accordance with Subsection E
17 must contain a reference to the recorded statement of claim or privilege. The failure
18 to file a timely notice of lis pendens does not extinguish the privilege as against the
19 owner, nor does it extinguish personal claims against the owner. See *Triangle*
20 *Pacific Corp. v. National Bldg. & Contracting Co., Inc.*, 652 So. 2d 552 (La. App.
21 1st Cir. 1995); *C & J Contractors v. American Bank & Trust Co.*, 559 So. 2d 810
22 (La. App. 1st Cir. 1990). The lack of a timely filed notice of pendency of action
23 instead merely makes the privilege ineffective as to third persons. See, e.g., *First*
24 *National Bank of Commerce v. de la Tour Contractors, Inc.*, 570 So. 2d 239 (La.
25 App. 4th Cir. 1990). A third person's knowledge of the pendency of an action to
26 which he is not a party does not obviate the need for a claimant to file a timely notice
27 of pendency of the action. See *Triangle Pacific Corp.*, supra.

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

33 §4834. Notice of contract; cessation of effect, reinscription

34 The effect of filing a notice of contract ceases five years after it is filed,
35 unless a written ~~request for~~ notice of its reinscription, in the manner provided for the
36 reinscription of mortgages, is properly and timely ~~made~~ filed by an interested person
37 ~~to~~ with the recorder of mortgages in whose office the notice of contract is filed. A
38 ~~request for~~ notice of reinscription may not be ~~made~~ filed after the effect of the filing
39 of the notice of the contract has ceased. The effect of reinscription shall cease five
40 years after the ~~request for~~ notice of reinscription is filed unless a subsequent notice
41 of reinscription is filed within that time.

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Comments - 2019

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

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

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

* * *

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

Comments - 2019

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

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

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

8 SUBPART F. ~~PROCEDURE FOR ENFORCEMENT;~~ DELIVERY OF
9 COMMUNICATIONS; BURDEN OF PROOF OF DELIVERY OF MOVABLES

10 §4841. Enforcement of claims and privileges; concursus

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

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

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

26 * * *

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

29 * * *

30 D.(1) If the court determines that the owner has properly deposited all sums
31 ~~owed by him~~ he owes to the contractor; that the owner has complied with this Part
32 by properly and timely filing notice of a contract and bond as required by R.S.

1 9:4811 and ~~R.S. 9:4812~~; and that the bond complies with the requirements of this
 2 Part, ~~or if it finds that any of the claims or privileges have not been preserved~~; it shall
 3 render a judgment on the rule motion directing the ~~claims or privileges to be~~
 4 ~~cancelled by the recorder~~ cancellation of all statements of claim or privilege and
 5 declaring the owner discharged from further liability. ~~for such claims or~~ If the court
 6 finds that any of the claims or privileges have not been preserved, it shall render a
 7 judgment on the motion directing the cancellation of such claims or privileges and
 8 declaring the owner discharged from further liability for such claims. The court may
 9 also render judgment on the motion limiting the claims and privileges to the amounts
 10 as may be owed by the owner or otherwise granting such relief to the owner as may
 11 be proper.

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

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

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

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

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

27 F. The attorney for the owner; who convokes a concursus under this Section,
 28 or the attorney for a claimant or privilege holder who convokes the concursus ~~where~~
 29 ~~more than~~ when no other person has done so within ninety days ~~have elapsed from~~

1 ~~accordance with R.S. 9:4844 or 4845, or any document required or permitted to be~~
 2 ~~delivered by this Part shall be deemed to have been given or delivered when it is~~
 3 ~~delivered to the person entitled to receive it, or when the notice or document is~~
 4 ~~properly deposited in the United States mail for delivery by certified or registered~~
 5 ~~mail to that person. The mailing may be addressed to an owner, contractor, or surety~~
 6 ~~at the address given in a notice of contract or attached bond filed in accordance with~~
 7 ~~this Part, or to a claimant at the address given in the statement of claim or privilege~~
 8 ~~filed by the claimant or a notice given by the claimant under the provisions of R.S.~~
 9 ~~9:4822.~~

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

Comments - 2019

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

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

29 §4843. Receipt of communications or documents

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

Comments - 2019

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

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

6 §4844. Delivery by mail or commercial courier

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

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

17 C. A communication or document may be addressed to an owner, contractor,
18 or surety at the address given in a notice of contract or attached bond filed in
19 accordance with this Part, or to a claimant at the address given in the statement of
20 claim or privilege filed by the claimant under the provisions of this Part.
21 Alternatively, a communication or document may be addressed to an owner,
22 contractor, surety, or claimant at the intended recipient's address designated as an
23 address for notice in any previous communication given by the intended recipient to
24 the sender with respect to the work.

25 D. If an address for an owner, contractor, or surety is not given in a filed
26 notice of contract or attached bond, and no address for notice has been designated
27 by the owner, contractor, or surety in a previous communication to the sender with
28 respect to the work, the communication or document may be addressed to the owner
29 or contractor at the address of the place of business through which the contract
30 between the owner and contractor was made, or to the surety at the address of the
31 office through which the bond was issued, or at any other place held out by the

1 owner, contractor, or surety as the place for receipt of communications related to the
 2 work.

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

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

17 Comments - 2019

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

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

35 (c) Subsection B provides that a communication sent through a commercial
 36 courier is deemed to have been given at the time that it is properly deposited with the
 37 commercial courier for delivery to the intended recipient, but only if the
 38 communication is actually received by the intended recipient within a reasonable
 39 time. Of course, actual receipt itself constitutes effective notice under R.S. 9:4843,

1 regardless of whether the delivery is made by a commercial courier or someone else.
2 The benefit to be derived from using a commercial courier to make delivery under
3 Subsection B is one of timing: the communication is deemed given at the moment
4 of deposit with the commercial courier, provided that it is actually received within
5 a reasonable period of time. The term "commercial courier" is defined in R.S.
6 9:4810.

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

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

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

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

25 §4845. Delivery by electronic means

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

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

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

1 §4852. Notice

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

6 NOTICE OF LIEN RIGHTS

7 Delivered this _____ day of _____, 20____, by _____,
8 Contractor.

9 I, the undersigned owner of residential property located at _____ (street
10 address) _____ in the city of _____, parish of _____,
11 Louisiana, acknowledge that the abovenamed contractor has delivered this notice to
12 me, the receipt of which is accepted, signifying my understanding that said
13 contractor is about to begin improving my residential property according to the terms
14 and conditions of a contract, and that in accordance with the provisions of law in Part
15 I of Chapter 2 of Code Title XXI of Title 9 of the Louisiana Revised Statutes of
16 1950, R.S. 9:4801, et seq.:

17 (1) A right to file a lien against my property and improvements is granted to
18 every contractor, subcontractor, architect, engineer, surveyor, mechanic, cartman,
19 truckman, workman, laborer, or furnisher of material, machinery or fixtures, who
20 performs work or furnishes material for the improvement or repair of my property,
21 for the payment in principal and interest of such work or labor performed, or the
22 materials, machinery or fixtures furnished, and for the cost of recording such
23 privilege.

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

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

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

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

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

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

20 (a) Before the work begins, have a written and signed contract with your
21 contractor and have a payment bond issued. Before the work begins, make sure a
22 notice of your contract and the bond are properly recorded in the parish mortgage
23 records.

24 (b) When your contractor is paid make sure that all those who worked on
25 your home or supplied materials or equipment have been paid in full. To do this, you
26 might want to require the contractor to give you written lien waivers signed by all
27 those who worked on your home or supplied materials or equipment, acknowledging
28 that they have been paid.

29 If you have further questions, contact a lawyer.

1 and roads of a proprietor, on the land over which levees, bridges and roads have been
2 made or repaired.

3 * * *

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

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

14 Art. 3269. Order of payment out of immovables; distribution of loss among
15 mortgage creditors

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

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

26 * * *

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

28 No privilege shall have effect against third persons, unless recorded in the
29 manner required by law in the parish where the property to be affected is situated.

1 It shall confer no preference on the creditor who holds it, over creditors who have
2 acquired a mortgage, unless the act or other evidence of the debt is recorded within
3 seven days from the date of the act or obligation of indebtedness when the registry
4 is required to be made in the parish where the act was passed or the indebtedness
5 originated and within fifteen days, if the registry is required to be made in any other
6 parish of this State. It shall, however, have effect against all parties from date of
7 registry.

8 The provisions of this Article are subject to exceptions provided by
9 legislation.

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

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

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

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

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

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

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

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

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

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

26 Section 9. The amendments to R.S. 9:4833 shall apply retroactively to all works,
27 including those begun, and those for which notice of contract was filed, prior to January 1,
28 2020.

1 Section 10. This Act does not affect an action, case, or proceeding commenced
2 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 Reengrossed

2019 Regular Session

Gregory Miller

Abstract: Provides relative to privileges on immovables.

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

Proposed law retains present law but makes changes in terminology.

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

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

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

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

Present law sets forth the notices that are required to be provided by professional consultants and subconsultants (R.S. 9:4801(5) and 4802(5)(b)), lessors of movables (R.S. 9:4802(G)), and sellers of movables (R.S. 9:4802(G)). Proposed law (R.S. 9:4804) redesignates present law and makes changes in terminology. Proposed law further provides for the contents of these notices, the circumstances under which notice must be given, and the effect of failing to properly provide notice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Proposed law changes present law by limiting the applicability of these ranking rules only to privileges arising under the Private Works Act as to themselves and as to other mortgages and privileges, but not as to other mortgages and privileges among themselves.

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

Proposed law (R.S. 9:4821(D)) provides that a privilege that encumbers a construction other than a building that would be movable under the Civil Code but is immovable for purposes of the Private Works Act is inferior to a UCC Chapter 9 security interest for which a

financing statement was filed and later perfected or that was perfected before the privilege became effective against third persons.

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

Proposed law (R.S. 9:4822(A) through (C)) amends present law and provides that if notice of contract is properly filed but no notice of termination is filed, a claimant must file his statement of claim and privilege no later than six months after substantial completion or abandonment of the work. Proposed law 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.

Proposed law further provides that for residential works, if a notice of contract is not timely filed, a statement of claim or privilege under R.S. 9:4802 may be filed at the later of 10 days after a notice of nonpayment is given or 60 days after the filing of a notice of termination or the substantial completion of the work. However, in any circumstance the statement of claim or privilege shall not be filed until at least 7 days have lapsed since delivery of notice of nonpayment.

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(E)) requires the notice of termination to contain a complete property description of the immovable and permits the notice of termination to certify that the contract with the general contractor has terminated. 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(F)) 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(I) and (J)) 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(D) and (E), 4820, 4821, 4822, 4823(A), (B), (C), (E), and (F), 4831, 4832(A)(intro. para.) and (1) and (B)(intro. para.) and (1), 4833(A), (B), (C), and (E), 4834, 4835(A) and (C), the heading of Subpart F of Part I of Chapter 2 of Code Title XXI of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, 4841(A), (B), (C)(intro. para.) and (3), (D), (E), and (F), 4842, and 4852(A); Adds R.S. 9:4803(C) and (D), 4804, 4809, 4810, 4813(F), 4832(C) and (D), 4843, 4844, 4845, and 4846; Repeals C.C. Arts. 2772, 2773, 2774, 2775, 2776, 3268, and 3272 and R.S. 9:4802(G) and 4811(E); Redesignates R.S. 9:4814, 4815, and 4822(M))

Summary of Amendments Adopted by House

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

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

The House Floor Amendments to the engrossed bill:

1. Define "residential work".
2. Provide notice requirements for preserving a claim or privilege in connection with a residential work.

3. Revise language contained in the notice of lien rights.
4. Make technical changes.