

ACT No. 325

2019 Regular Session

HOUSE BILL NO. 203

BY REPRESENTATIVE GREGORY MILLER

(On Recommendation of the Louisiana State Law Institute)

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AN ACT

To amend and reenact Civil Code Articles 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)(introductory paragraph) and (1) and (B)(introductory paragraph) 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)(introductory paragraph) and (3), (D), (E), and (F), 4842, and 4852(A), to enact R.S. 9:4803(C) and (D), 4804, 4809, 4810, 4813(F), 4832(C) and (D), 4843, 4844, 4845, and 4846, and to repeal Civil Code Articles 2772, 2773, 2774, 2775, 2776, 3268, and 3272 and R.S. 9:4802(G) and 4811(E), and to redesignate R.S. 9:4814, 4815, and 4822(M), relative to privileges on immovables; to provide for claims against owners and contractors; to provide for the amounts secured by claims and privileges; to provide for notice and requests for statements of amounts owed; to provide definitions of terms; to provide for the filing of a notice of contract; to provide for the furnishing and maintenance of bonds; to provide for the liability of sureties; to provide for the effectiveness and ranking of privileges; to provide for the preservation and extinguishment of claims and privileges; to provide for the filing of notice of contract and termination, statement of claim or privilege, affidavits, and notice of pendency of action; to provide for cancellation and effectiveness of notice of contract and cancellation of statements of claims or privileges; to provide for the enforcement of claims and privileges; to provide for

1 delivery and receipt of communications and other documents; to provide for proof
 2 of delivery of movables; to provide for notice for residential home improvements;
 3 to provide for redesignations; to provide for effectiveness and applicability; and to
 4 provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 9:4801(5), 4802(A)(5), (B), (C), and (F), 4803(A)(1) and (B), 4806,
 7 4807(B), 4808(A), (B), (C), and (D)(1), 4811(A)(2), (B), and (D), 4812(A), (B), and (E)(1)
 8 and (2), 4813(D) and (E), 4820, 4821, 4822, 4823(A), (B), (C), (E), and (F), 4831,
 9 4832(A)(introductory paragraph) and (1) and (B)(introductory paragraph) and (1), 4833(A),
 10 (B), (C), and (E), 4834, 4835(A) and (C), the heading of Subpart F of Part I of Chapter 2 of
 11 Code Title XXI of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950,
 12 4841(A), (B), (C)(introductory paragraph) and (3), (D), (E), and (F), 4842, and 4852(A) are
 13 hereby amended and reenacted, and R.S. 9:4803(C) and (D), 4804, 4809, 4810, 4813(F),
 14 4832(C) and (D), 4843, 4844, 4845, and 4846 are hereby enacted to read as follows:

15 §4801. Improvement of immovable by owner; privileges securing the improvement

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

18 * * *

19 (5) ~~Registered or certified surveyors or engineers, or licensed architects, or~~
 20 ~~their~~ Professional consultants engaged by the owner, and the professional
 21 subconsultants of those professional consultants, ~~employed by the owner;~~ for the
 22 price of professional services rendered in connection with a work that is undertaken
 23 by the owner. ~~A "professional subconsultant" means a registered or certified~~
 24 ~~surveyor or engineer or licensed architect employed by the prime professional, as~~
 25 ~~described in this Paragraph. In order for the privilege of the professional~~
 26 ~~subconsultant to arise, the subconsultant must give notice to the owner within thirty~~
 27 ~~days after the date that the subconsultant enters into a written contract of~~
 28 ~~employment. The notice shall include the name and address of the subconsultant,~~
 29 ~~the name and address of his employer, and the general nature of the work to be~~
 30 ~~performed by the subconsultant.~~

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Comments - 2019

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

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

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

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

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

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(f) Paragraph (3) recognizes the distinction articulated in the jurisprudence between a contract of sale and a contract for the performance of work. See *Leonard B. Hebert, Jr. & Co. v. Kinler*, 336 So. 2d 922 (La. App. 4th Cir. 1976); *Heard v. Southwest Steel Products*, 124 So. 2d 211 (La. App. 2d Cir. 1960); *Thurman v. Star Elec. Supply, Inc.*, 307 So. 2d 283 (La. 1975) (citing *Heard* in interpreting the Public Works Act); *Wilson Industries, Inc. v. Aviva America, Inc.*, 185 F.3d 492 (5th Cir. 1999) (citing R.S. 9:4801 and *Hebert*, *Thurman*, and *Heard* in applying these principles to the Louisiana Oil Well Lien Act); and *Stainless Piping Materials, Inc. v. Shell Oil Co.*, 1987 WL 5612 (E.D. La. 1987). See also *Tooley-Knoblett and Gruning*, 24 La. Civ. L. Treatise, Sales §1:10 (2012). Although the person dealing with the owner is given a privilege by this Section whether he is a contractor or a seller, the distinction is nevertheless relevant in determining the rights and obligations of that person under the Act. The distinction is also important in that a seller to a contractor is given rights under R.S. 9:4802 but a seller to another seller is not.

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(g) For a privilege to exist under the Private Works Act in favor of a seller, the things sold must be physically incorporated into the immovable or consumed in the work. See *Nu-Lite Elec. Wholesalers v. Colonial Elec.*, 527 So. 2d 498 (La. App. 5th Cir. 1988); *H.G. Angle Co. v. Talmadge*, 410 So. 2d 1151 (La. App. 3d Cir. 1981); *Century National Bank v. Parent*, 341 So. 2d 1371 (La. App. 4th Cir. 1977); and *Tri-South Mortg. Investors v. Forest & Waterway Corp.*, 354 So. 2d 588 (La.

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1 App. 4th Cir. 1977). R.S. 9:4846 creates a rebuttable presumption that movables that
2 the seller delivers to the site of the immovable become component parts of the
3 immovable or are consumed in the work. Incorporation of the thing sold into the
4 immovable not only gives rise to a privilege under the Act but also effectively
5 extinguishes the vendor's privilege to which the seller would otherwise be entitled
6 under the Civil Code. See *American Creosote Company v. Springer*, 241 So. 2d 510
7 (La. 1970); *Hyman v. Ross*, 643 So. 2d 256 (La. App. 2d Cir. 1994).

8 (h) Under Paragraph (3), electricity and other sources of energy are
9 movables. See A.N. Yiannopoulos, 2 La. Civ. L. Treatise, Property §7:46 (5th ed.)
10 (stating that "energies are things in Louisiana, protected by the laws applicable to
11 movable property"). See also *Sommers v. Secretary, Dept. of Revenue and Taxation*,
12 593 So. 2d 689 (La. App. 1st Cir. 1991) (citing Comment (b) to Civil Code Article
13 461 and determining that "electricity can be moved from one place to another and,
14 as such, is by definition a movable.")

15 (i) The terms "professional consultant" and "professional subconsultant" are
16 defined in R.S. 9:4810. The privileges provided under Paragraph (5) exist in their
17 favor only if the services that they perform relate to a work on the immovable. See
18 *Construction Eng. Co. of La. v. Village Shop Ctr.*, 168 So. 2d 826 (La. App. 2d Cir.
19 1964). Several provisions of the Private Works Act treat the privileges established
20 under Paragraph (5) and under R.S. 9:4802(A)(5) differently from those accorded to
21 other claimants. See, e.g., R.S. 9:4804(A), 4820(D), and 4821(B)(3).

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

25 §4802. Improvement of immovable by contractor; claims against the owner and
26 contractor; privileges securing the improvement

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

30 * * *

31 (5) ~~Prime consultant registered or certified surveyors or engineers, or~~
32 ~~licensed architects, or their professional subconsultants, employed~~ Professional
33 consultants engaged by the contractor or a subcontractor, and the professional
34 subconsultants of those professional consultants, for the price of professional
35 services rendered in connection with a work that is undertaken by the contractor or
36 subcontractor.

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

39 (b) ~~For the privilege under this Subsection to arise, a prime consultant or~~
40 ~~professional subconsultant shall give written notice to the owner within thirty~~

1 ~~working days after the date that the prime consultant or professional subconsultant~~
2 ~~is employed. The notice shall include the name and address of the prime consultant~~
3 ~~or professional subconsultant, the name and address of his employer, and the general~~
4 ~~nature of the work to be performed by the prime consultant or professional~~
5 ~~subconsultant.~~

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

8 C. The owner is relieved of the claims against him under this Section and the
9 privileges securing them when the claims arise from the performance of a contract
10 by a general contractor for whom a bond is given and maintained as required by R.S.
11 9:4812 and when notice of the contract with the bond attached is properly and timely
12 filed as required by R.S. 9:4811.

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

26 Comments - 2019

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

31 (b) Those claimants who are granted a claim against the owner under this
32 Section have personal recourse against the owner as well as a privilege upon the

1 owner's interest in the immovable as security for that claim. These claimants are also
 2 granted a personal claim against the contractor, even where they are not in direct
 3 privity of contract with the contractor. The personal liability imposed upon the
 4 owner and that imposed upon the contractor are distinct and may be separately
 5 extinguished. See R.S. 9:4823. The liability that this Section imposes upon the
 6 contractor exists not only in favor of those claimants who deal with subcontractors
 7 but also in favor of those who are in direct privity of contract with the contractor.
 8 While the extinguishment of the statutory liability of the contractor in the latter case
 9 will not relieve the contractor or his surety of their contractual liabilities, it may
 10 affect the priority of the claim against the surety vis-a-vis other claimants who
 11 preserve their statutory claims against the contractor. See R.S. 9:4813(B).

12 (c) Although the personal liability imposed upon the owner and upon the
 13 contractor by this Section is not that of a surety, the claims against them arising
 14 under this Section are nonetheless a kind of personal security and are accessory to
 15 the primary contractual obligations owed to the claimants. See Civil Code Articles
 16 3136 through 3138. Thus, extinguishment of the primary contractual obligation
 17 extinguishes the statutory liability under this Section. See R.S. 9:4823(A)(3).

18 (d) Each privilege granted by Subsection B is security for the corresponding
 19 claim against the owner arising under Subsection A and is thus extinguished when
 20 the claim is extinguished. See Civil Code Article 3277(3). The converse is not
 21 necessarily true and, based on certain former provisions of the Private Works Act
 22 providing for the loss of the privilege without also providing for the simultaneous
 23 loss of the underlying claim, courts have held that a personal claim against an owner
 24 can exist under this Section even where the privilege has been lost. See *Hawk Field*
 25 *Services, L.L.C. v. Mid America Underground, L.L.C.*, 94 So. 3d 136 (La. App. 2d
 26 Cir. 2012); *Standard Materials, L.L.C. v. C & C Builders, Inc.*, 2010 WL 5479903
 27 (La. App. 1st Cir. 2010). The 2019 revision is intended to reduce the circumstances
 28 under which this could occur, so that the claim and privilege securing it will almost
 29 always be co-terminous. See, e.g., R.S. 9:4804 (requiring certain claimants to give
 30 notices in order to be entitled to either a claim or a privilege); R.S. 9:4805(A)
 31 (providing for extinguishment of a claimant's claim and privilege to the extent of
 32 damages suffered when the claimant fails to provide information requested under
 33 that Section); R.S. 9:4822 (specifying the action required to preserve claims and
 34 privileges); and R.S. 9:4823 (providing for the simultaneous extinguishment of a
 35 claim and the privilege securing it). Nevertheless, the revision specifically provides,
 36 in limited circumstances, for the continued existence of the personal claim against
 37 the owner even though the privilege securing the claim is lost by the claimant's
 38 failure to file a timely statement of claim or privilege. See R.S. 9:4822(H) and (I).
 39 Similarly, where the owner posts a release bond pursuant to R.S. 9:4835, the
 40 privilege is extinguished, but the claim against the owner continues. R.S. 9:4823(D).
 41 The revision also provides that a statement of claim or privilege identifying an
 42 immovable by reference to a notice of contract that itself does not contain a
 43 reasonable identification of the immovable is insufficient to preserve the claimant's
 44 privilege against third persons but is nevertheless sufficient to preserve the claimant's
 45 rights against the owner, the contractor, and the surety. See R.S. 9:4831(D).

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 47 (e) Subsection C allows the owner to avoid the claims arising under this
 48 Section and the privileges securing them by requiring the contractor to provide a
 49 payment bond in accordance with R.S. 9:4812 and by filing a timely notice of
 50 contract, with the bond attached, as provided in R.S. 9:4811(A). The filing of notice
 51 of contract and bond will not, however, avoid the general contractor's privilege under
 52 R.S. 9:4801(1) for the price of the contract or any other privileges arising under R.S.
 53 9:4801. The filing of notice of contract and bond also does not eliminate claims
 54 against the contractor arising under Subsection A.

55 (f) Subsections D and E make clear that the liability of the owner, contractor,
 56 and surety are distinct from and supplemental to any contractual obligations that may

1 exist. Although each may be liable to the claimant who takes steps to preserve his
 2 rights under the Private Works Act, those liabilities are not expressed as being
 3 solidary. It is not intended that the technical rules regulating the obligations of
 4 solidary obligors prescribed by Civil Code Articles 1794 et seq. apply to such
 5 relationships.

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

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

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

40 §4803. Amounts secured by claims and privileges

41 A. The privileges granted by R.S. 9:4801 and the claims granted by R.S.
 42 9:4802 secure payment of:

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

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1 under the definition of that term in R.S. 9:4810 and, according to the circumstances,
2 may be entitled to a claim or privilege in his own right.

3 §4804. Notices required of certain claimants

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

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

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

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

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

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

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

43 (g) Where a timely notice of contract has been filed and includes the owner's
 44 address, a claimant who wishes to preserve a claim and privilege granted to him
 45 under R.S. 9:4802 must deliver a copy of his statement of claim or privilege to the
 46 owner within the same time required for its filing in the mortgage records. See R.S.
 47 9:4822(B).

48 SUBPART B. DEFINITIONS

49 §4806. Owner defined; interest affected

50 A. An owner, co-owner, naked owner, ~~owner~~ usufructuary, other holder of
 51 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~~ 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.
 32 Anyone having the right to the use or enjoyment of an immovable can be an "owner"

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

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

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

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

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

49 §4807. Contractor, general contractor, subcontractor defined

50 * * *

- 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,
37 shall be deemed a separate work to the extent the preparatory work is not a part of

1 the contractor's work ~~for the erection of the building or other construction~~. The
 2 privileges granted by this Part for the work described in this Subsection shall have
 3 no effect as to third persons acquiring rights in, to, or on the immovable before the
 4 statement of claim or privilege is filed.

5 D. This Part does not apply to:

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

9 * * *

10 Comments - 2019

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

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

40 (c) Under Subsection B, if notice of contract with a contractor who would
 41 not otherwise be considered a general contractor is timely filed, the contractor is
 42 nonetheless deemed to be a general contractor, and the work to be performed under
 43 the contract is conclusively deemed to be a separate work, even though it may be part
 44 of a larger project being carried out by the owner. The 2019 revision to the Private
 45 Works Act removes the former requirement of the filing of a bond with the notice
 46 of contract in order to achieve this effect. Thus, where such a notice of contract is
 47 timely filed, with or without a bond, issues such as the time for filing statements of

1 claim or privilege arising from the work covered by the contract, the liability of the
 2 surety, and all other aspects of the Private Works Act, are determined independently
 3 of other work being carried out by the owner. On the other hand, where a notice of
 4 contract is not filed in a timely manner, the question of whether work done by
 5 several contractors, or partly by the owner himself and partly by contractors, is so
 6 substantially interrelated as to constitute a single work is left to the determination of
 7 the courts in light of Subsection A.

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

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

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

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

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

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

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

26 SUBPART C. WORK PERFORMED BY GENERAL CONTRACTORS

27 §4811. Notice of a contract with a general contractor to be filed

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

31 * * *

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

35 * * *

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

1 not satisfy the requirements of R.S. 9:4802(C) and accordingly will not insulate the
 2 owner from claims and privileges arising under R.S. 9:4802.

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

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

25 §4812. Bond required; terms and conditions

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

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

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

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

1 Act. Subsection C establishes a presumption that a bond given under the Act
 2 comprehends both payment and performance unless a guarantee of the contractor's
 3 performance is expressly excluded.

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

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

25 §4813. Liability of the surety

26 * * *

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

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

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

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Comments - 2019

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

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

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

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

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

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

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

3 SUBPART D. CLAIMS AND PRIVILEGES; EFFECTIVENESS;
 4 PRESERVATION; RANKING; EXTINGUISHMENT

5 §4820. Privileges; effective date

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

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

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

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

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

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

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

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

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

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

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

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

50 §4821. Ranking of privileges arising under this Part

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

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

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

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

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

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

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

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

24 (1) All privileges granted by this Part are inferior to privileges for ad
 25 valorem taxes or local assessments for public improvements against the immovable,
 26 privileges granted in favor of parishes for reasonable charges imposed on the
 27 immovable under R.S. 33:1236, privileges granted in favor of municipalities for
 28 reasonable charges imposed on the immovable under R.S. 33:4752, 4753, 4754,
 29 4766, 5062, and 5062.1, and privileges granted in favor of a parish or municipality
 30 for reasonable charges imposed on the immovable under R.S. 13:2575.

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

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

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

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

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

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

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

25 D. A privilege under this Part encumbering a construction that is
26 permanently attached to the ground and belongs to a person other than the landowner
27 is superior to all conflicting security interests created under Chapter 9 of the Uniform
28 Commercial Code other than those that were perfected before the privilege becomes
29 effective against third persons or that are perfected by a financing statement filed

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

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

43 §4822. Preservation of claims and privileges

44 A. Except as otherwise provided in Subsections B, C, and D of this Section,
 45 a person granted a privilege under R.S. 9:4801 or a claim and privilege under R.S.
 46 9:4802 shall file a statement of his claim or privilege no later than sixty days after:

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

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

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

9 (2) ~~Deliver to the owner a copy of the statement of claim or privilege. If the~~
 10 ~~address of the owner is not given in the notice of contract, the claimant is not~~
 11 ~~required to deliver a copy of his statement to the owner.~~ Six months after the
 12 substantial completion or abandonment of the work, if a notice of termination is not
 13 filed.

14 B.C. A general contractor to whom a privilege is granted by R.S. 9:4801 ~~of~~
 15 ~~this Part~~, and whose privilege has been preserved in the manner provided by R.S.
 16 9:4811, shall file a statement of his privilege ~~within sixty days after the filing of the~~
 17 ~~notice of termination or substantial completion of the work.~~ no later than:

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

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

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

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

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

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

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

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

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

11 (a) ~~The filing of a notice of termination of the work, or~~
 12 (b) ~~The substantial completion or abandonment of the work, if a notice of~~
 13 ~~termination is not filed.~~

14 D. If before expiration of the period provided in Subsection A of this Section
 15 and at least ten days before filing his statement of claim or privilege a person granted
 16 a privilege under R.S. 9:4801(3) or (4), or a claim and privilege under R.S. 9:4802,
 17 in connection with a residential work for which a timely notice of contract was not
 18 filed gives notice of nonpayment to the owner, setting forth the amount and nature
 19 of the obligation giving rise to the claim and privilege, then the period in which the
 20 person is permitted to file his statement of privilege or claim shall expire seventy
 21 days after:

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

25 E. A notice of termination of the work:
 26 (1) Shall ~~reasonably identify~~ contain a complete property description of the
 27 immovable upon which the work was performed and the work to which it relates.
 28 If the work is evidenced by notice of a contract, reference to the notice of contract,
 29 together with its registry number or other appropriate recordation information and
 30 ~~as filed or recorded, together with the names of the parties to the~~ as they appear in

1 the notice of contract, shall be deemed adequate identification of the ~~immovable and~~
 2 work.

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

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

- 9 (a) The work has been substantially completed; ~~or,~~
- 10 (b) The work has been abandoned by the owner; ~~or,~~
- 11 (c) ~~A contractor~~ The general contractor is in default under the terms of the
 12 contract.

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

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

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

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

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

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

10 (1) Shall be in writing.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~J. Before any person having a direct contractual relationship with a~~
28 ~~subcontractor, but no contractual relationship with the contractor, shall have a right~~
29 ~~of action against the contractor or surety on the bond furnished by the contractor, he~~
30 ~~must record his claim as provided in this Section and give written notice to the~~

1 contractor within thirty days from the recordation of notice of termination of the
 2 work, stating with substantial accuracy the amount claimed and the name of the party
 3 to whom the material was furnished or supplied or for whom the labor or service was
 4 done or performed. Such notice shall be served by mailing the same by registered
 5 or certified mail, postage prepaid, in an envelope addressed to the contractor at any
 6 place he maintains an office in the state of Louisiana.

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

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

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

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

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

19 (a) ~~Filing a notice of termination of the work; or~~

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

22 (2) ~~The owner who fails to give notice to the person under the provisions of~~
 23 ~~this Subsection within ten days of commencement of the period for preservation of~~
 24 ~~claims and privileges shall be liable for all costs and attorney's fees for the~~
 25 ~~establishment and enforcement of the claim or privilege.~~

26 Comments - 2019

27 (a) This Section establishes the procedure that persons having claims or
 28 privileges under the Private Works Act must follow in order to preserve those claims
 29 and privileges. The 2019 revision of this Section makes a number of substantive
 30 changes in the law.

31 (b) Subsection A provides the general rule describing the action that a
 32 Private Works Act claimant must take to preserve his claim and privilege and the

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

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

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

52 (e) Subsection C, which corresponds to Subsection B of the former
 53 provision, provides the period within which general contractors must file statements
 54 of privilege. Subsection C applies by its terms regardless of whether notice of
 55 contract is filed, but a general contractor under a contract for more than \$100,000
 56 will not be entitled to file a statement of privilege at all unless he has caused notice

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

17 (f) Subsection C applies only to general contractors, as defined in R.S.
 18 9:4807(B). Other contractors entitled to a privilege under R.S. 9:4801(1), as well as
 19 all persons entitled to a privilege under R.S. 9:4801(2), (3), (4) and (5), must file
 20 within the period prescribed by Subsection A. See *Evangeline Brokerage Co., Inc.*
 21 *v. Lewis*, 539 So. 2d 1311 (La. App. 3d Cir. 1989).

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

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

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

53 (j) The changes made to Subsection F are intended to restore the substance
 54 of the Subsection to its original meaning, while at the same time reversing the effect
 55

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

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

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

42
 43 (l) Subsections H and I, which replace former Subsections K and L, provide
 44 a mechanism by which a claimant granted a claim and privilege under R.S. 9:4802
 45 can request notice from the owner of the substantial completion or abandonment of
 46 the work or of the filing of notice of termination of the work. Those events all
 47 potentially start the running of the delays within which the claimant must file in
 48 order to preserve his claim and privilege. The former provision allowed a claimant
 49 to request notice, but the remedy that it provided (recovery of attorney fees without
 50 preservation of the claimant's claim against the non-complying owner) was wholly
 51 unsuited to address the harm the claimant might suffer if the owner failed to comply
 52 with the request. See *Buck Town Contractors & Co. v. K-Belle Consultants, LLC*,
 53 216 So. 3d 981 (La. App. 4th Cir. 2016); *Byron Montz, Inc. v. Conco Construction,*
 54 *Inc.*, 824 So. 2d 498 (La. App. 4th Cir. 2002). Under revised Subsection I, if an
 55 owner does not comply with a claimant's request under Subsection H for notice of
 56 the substantial completion or abandonment of the work or of the filing of notice of
 57 termination of the work, the claimant's failure to file a timely statement of claim or

1 privilege does not cause the loss of his claim against the owner under R.S.
 2 9:4802(A). Nevertheless, the claimant's privilege under R.S. 9:4802(B) will be
 3 extinguished by his failure to file. The claimant's rights against the contractor and
 4 surety will also be extinguished by the claimant's failure to file a statement of claim
 5 or privilege, unless the claimant preserves his rights against them by delivering to
 6 the contractor a timely statement of claim or privilege under R.S. 9:4823(B).

7 (m) The rule of former Paragraph (D)(1) that privileges arising under R.S.
 8 9:4801(5) and those securing a claim arising under R.S. 9:4802(A)(5) are not
 9 effective as to third persons until the time of filing of the statement of claim or
 10 privilege now appears in R.S. 9:4820(D).

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

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

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

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

25 §4823. Extinguishment of claims and privileges

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

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

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

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

35 B. ~~A~~ Notwithstanding Subsection A of this Section, a claim against a
 36 contractor granted by R.S. 9:4802 is not extinguished by the failure to file a
 37 statement of claim or privilege as required by R.S. 9:4822 if a statement of the claim
 38 or privilege is delivered to the contractor within the period allowed for its filing by
 39 R.S. 9:4822. The failure to file an action against the owner as required by ~~R.S.~~

1 (d) Subsection B provides that the extinction of the claim against the owner
 2 will not necessarily extinguish the statutory claim against the contractor, if the
 3 claimant delivers a statement of claim or privilege to the contractor within the period
 4 in which it should have been filed. Under those circumstances, which presuppose
 5 that no statement of claim or privilege is filed, the period allowed the claimant to
 6 bring suit against the contractor and surety is one year from the expiration of the
 7 filing period.

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

19 (f) Although Subsections D and E refer to the filing of a surety bond, R.S.
 20 9:4835 permits, instead of a bond, the deposit of funds to secure payment of the
 21 claims. In light of the provisions of R.S. 9:4835, authorizing the clerk to cancel the
 22 privileges upon the giving of such security, the term "bond" in this Section should
 23 be construed to include not only a surety bond but also the other forms of security
 24 permitted to be given by R.S. 9:4835 in lieu of a bond. As revised, Subsection E
 25 provides that a bond or other security posted by either a contractor or a subcontractor
 26 relieves the owner of liability for the claim.

27 SUBPART E. FILING; CANCELLATION; PEREMPTION

28 §4831. Filing; place of filing; contents

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

35 B. ~~For purposes of this Part, the recorder of mortgages includes the office of~~
 36 ~~the clerk of court and ex officio recorder of mortgages.~~ Each notice of contract,
 37 notice of termination of work, affidavit filed in accordance with R.S. 9:4820(C) or
 38 4832(C), and other filing by an owner under this Part shall contain a complete
 39 property description of the immovable upon which the work is to be or has been
 40 performed. Each other filing under this Part shall contain either a complete property
 41 description of the immovable or another reasonable identification of the immovable.

1 complete property description, a term defined in R.S. 9:4810(3). Filings made by
 2 other persons, such as statements of claim or privilege filed by claimants, may
 3 contain a complete property description but are required to contain only a reasonable
 4 identification of the immovable. In neither case, however, is a mere street address
 5 sufficient. See *Tee It Up Golf, Inc. v. Bayou State Construction, LLC*, 30 So. 3d
 6 1159 (La. App. 3d Cir. 2010); *Boes Iron Works, Inc. v. Spartan Bldg. Corp.*, 648 So.
 7 2d 24 (La. App. 4th Cir. 1994); *Norman H. Voelkel Const., Inc. v. Recorder of*
 8 *Mortgages for East Baton Rouge Parish*, (La. App. 1st Cir. 2003). A description of
 9 the immovable as a designated lot in a properly platted subdivision would ordinarily
 10 be sufficient as both a complete property description and a reasonable identification,
 11 unless something less than the entire lot that is designated is intended.

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

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

29 §4832. Cancellation of notice of contract

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

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

36 * * *

37 B. If the request for cancellation of a notice of contract does not contain or
 38 is not accompanied by the written concurrence or receipt of the contractor, but a
 39 statement of claim or privilege was not filed ~~within~~ before expiration of the thirty
 40 day period, the recorder of mortgages shall cancel the notice of contract as to all
 41 claims and privileges except that of the contractor. The recorder of mortgages shall

1 completely cancel the notice of contract from his records upon written request of any
2 person if either of the following conditions is satisfied:

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

6 * * *

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

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

11 (2) Within four business days after the filing of the request for cancellation,
12 an affidavit made by a qualified inspector is filed to the effect that he inspected the
13 immovable at a specified time subsequent to the filing of the request for cancellation
14 and that work had not then begun, as the beginning of work is defined by R.S.
15 9:4820.

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

18 Comments - 2019

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

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

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

13 §4833. Request to cancel the inscription of claims and privileges; cancellation;
 14 notice of pendency of action

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

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

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

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Comments - 2019

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

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

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

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

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

The effect of filing a notice of contract ceases five years after it is filed, unless a written ~~request for~~ notice of its reinscription, in the manner provided for the reinscription of mortgages, is properly and timely ~~made~~ filed by an interested person ~~to~~ with the recorder of mortgages in whose office the notice of contract is filed. A ~~request for~~ notice of reinscription may not be ~~made~~ filed after the effect of the filing of the notice of the contract has ceased. The effect of reinscription shall cease five years after the ~~request for~~ notice of reinscription is filed unless a subsequent notice 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~~
 30 ~~the~~ after expiration of the time given by R.S. 9:4822 for claimants or privilege

1 holders to file statements of their ~~claim and such a concursus has not been convoked,~~
 2 claims or privileges, shall be entitled to recover from the contractor and his surety
 3 a reasonable fee for his services in convoking the concursus. The fees awarded may
 4 be paid out of the funds deposited into the registry of the court but only after
 5 satisfaction of all valid claims and privileges.

6 * * *

7 Comments - 2019

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

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

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

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

36 §4842. Delivery of ~~notice~~ communications or ~~other documents and materials;~~
 37 burden of proof

38 ~~A. A notice~~ Delivery of a communication or document required or permitted
 39 by this Part to be given by this Part or delivered is accomplished when the
 40 communication or document is received in accordance with R.S. 9:4843 by the
 41 person to whom it is sent or when it is deemed to have been given or delivered in
 42 accordance with R.S. 9:4844 or 4845. ~~or any document required or permitted to be~~

1 recipient's possession, not at the earlier point in time at which it was transmitted or
2 dispatched. The following two Sections provide the means of delivering a
3 communication that will be deemed given at the time of transmission or dispatch.

4 §4844. Delivery by mail or commercial courier

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

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

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

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

1 a reasonable period of time. The term "commercial courier" is defined in R.S.
 2 9:4810.

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

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

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

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

21 §4845. Delivery by electronic means

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

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

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

35 (3) The communication or document enters an electronic information
 36 processing system designated or used by the recipient for purposes of receiving
 37 communications or documents related to the work, and the communication or

1 document is deemed to have been received by the recipient in accordance with R.S.
 2 9:2615.

3 Comments - 2019

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

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

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

21 §4846. Proof of delivery of movables; prima facie evidence

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

27 Comments - 2019

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

33 * * *

34 §4852. Notice

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

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

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NOTICE OF LIEN RIGHTS

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

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

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

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

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

~~(4) That I may require a written contract, to be recorded, and a bond with sufficient surety to be furnished and recorded by the contractor in an amount sufficient to cover the cost of such improvements, thereby relieving me, as owner, and my property, of liability for any unpaid sums remaining due and owing after~~

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

1 Art. 3249. Special privileges on immovables

2 Creditors who have a privilege on immovables; are:

3 ~~1.~~(1) The vendor on the estate by him sold, for the payment of the price or
4 so much of it as is unpaid, whether it was sold on or without a credit.

5 ~~2.~~(2) ~~Architects, undertakers, bricklayers, painters, master builders,~~
6 ~~contractors, subcontractors, journeymen, laborers, cartmen and other workmen~~
7 ~~employed in constructing, rebuilding or repairing houses, buildings, or making other~~
8 ~~works.~~ Those who are granted special privileges on immovables by legislation.

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

13 ~~The above named parties shall have a lien and privilege upon the building,~~
14 ~~improvement or other work erected, and upon the lot of ground not exceeding one~~
15 ~~acre, upon which the building, improvement or other work shall be erected;~~
16 ~~provided, that such lot of ground belongs to the person having such building,~~
17 ~~improvement or other work erected; and if such building, improvement or other work~~
18 ~~is caused to be erected by a lessee of the lot of ground, in that case the privilege shall~~
19 ~~exist only against the lease and shall not affect the owner.~~

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

24 * * *

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

26 If the ~~movables~~ immovables of the debtor are subject to ~~the vendor's~~
27 ~~privilege,~~ vendor's privileges or if there be a house or other work subjected to the
28 ~~privilege of the workmen who have constructed or repaired it, or of the individuals~~
29 ~~who furnished the materials~~ other special privileges, the ~~vendor, workmen and~~
30 ~~furnishers of materials,~~ vendors and creditors having other special privileges shall

1 be paid from the price of the object affected in their favor, in preference to other
2 privileged debts of the debtor, even funeral charges, except the charges for affixing
3 seals, making inventories, and others which may have been necessary to procure the
4 sale of the thing.

5 Art. 3269. Order of payment out of immovables; distribution of loss among
6 mortgage creditors

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

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

17 * * *

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

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

28 The provisions of this Article are subject to exceptions provided by
29 legislation.

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

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

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

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

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

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

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

1 and privilege under R.S. 9:4802 shall in no event file a statement of claim or privilege later
2 than June 30, 2020.

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

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

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

15 Section 9. The amendments to R.S. 9:4833 shall apply retroactively to all works,
16 including those begun, and those for which notice of contract was filed, prior to January 1,
17 2020.

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____