

SENATE BILL NO. 172

BY SENATOR COLOMB

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

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AN ACT

To amend and reenact Civil Code Arts. 96, 367, and 2333, R.S. 9:221, 253, and 255, and Children's Code Arts. 1545, 1547, and 1548, and to enact Civil Code Art. 90.1, relative to marriage; to provide for parental consent for a minimum age for marriage; to provide for judicial limitations and authorization; to provide certain terms, conditions, procedures, requirements, effects, and prohibitions; to provide for evidence of human trafficking, sexual assault, domestic violence, coercion, duress or undue influence; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Civil Code Arts. 96, 367 and 2333 are hereby amended and reenacted and Civil Code Art. 90.1 is hereby enacted to read as follows:

Art. 90.1. Impediment of age

A minor under the age of sixteen may not contract marriage. A minor sixteen or seventeen years of age may not contract marriage with a person of the age of majority where there is an age difference of three years or greater between them.

\* \* \*

Art. 96. Civil effects of absolutely null marriage; putative marriage

An absolutely null marriage nevertheless produces civil effects in favor of a party who contracted it in good faith for as long as that party remains in good faith. When the cause of the nullity is one party's prior undissolved marriage, the civil effects continue in favor of the other party, regardless of whether the latter remains in good faith, until the marriage is pronounced null or the latter party contracts a valid marriage. ~~When the cause of the nullity is an impediment of age, the~~ marriage produces civil effects in favor of a child of the parties. When the cause

1 of the nullity is another reason, a marriage contracted by a party in good faith  
2 produces civil effects in favor of a child of the parties. A purported marriage between  
3 parties of the same sex does not produce any civil effects.

4 \* \* \*

5 Art. 367. Emancipation by marriage

6 A minor sixteen or seventeen years of age is fully emancipated by marriage.  
7 Termination of the marriage does not affect emancipation by marriage. Emancipation  
8 by marriage may not be modified or terminated.

9 \* \* \*

10 Art. 2333. Minors.

11 ~~Unless fully emancipated, a minor~~ A minor under the age of sixteen may  
12 not enter into a matrimonial agreement. A minor sixteen or seventeen years of  
13 age may not enter into a matrimonial agreement without judicial authorization and  
14 the written concurrence of his father and mother, or of the parent having his legal  
15 custody, or of the tutor of his person.

16 Section 2. R.S. 9:221, 253, and 255 are hereby amended and reenacted to read as  
17 follows:

18 §221. Authority to issue marriage license

19 A. A license authorizing an officiant to perform a marriage ceremony must  
20 be issued by:

21 (1) The state registrar of vital records, or a judge of the city court, in the  
22 Parish of Orleans;

23 (2) The clerk of court, in any other parish; or

24 (3) A district judge, if the clerk of court is a party to the marriage.

25 B. No marriage license for a minor under the age of sixteen shall be  
26 issued. No marriage license for a minor of the age of sixteen or seventeen shall  
27 be issued where there is an age difference of three years or greater between the  
28 persons seeking the marriage license.

29 \* \* \*

30 §253. Disposition and recordation of marriage certificates



- 1 (1) Both of his parents.
- 2 (2) The tutor of his person.
- 3 (3) A person who has been awarded custody of the minor.
- 4 ~~(4) The juvenile court as provided in Article 1547.~~

5 B. ~~A minor under the age of sixteen must also obtain written authorization~~  
 6 ~~to marry from the judge of the court exercising juvenile jurisdiction in the parish in~~  
 7 ~~which the minor resides or the marriage ceremony is to be performed.~~ **No marriage**  
 8 **ceremony shall be performed for a minor under the age of sixteen.**

9 \* \* \*

10 Art. 1547. Judicial authorization; compelling reasons

11 Upon application by ~~the minor~~, **a minor of the age of sixteen or seventeen**,  
 12 the judge may authorize the marriage when there is a compelling reason why the  
 13 marriage should take place. **The court shall consider the best interest of the minor**  
 14 **prospective spouse.**

15 Art. 1548. Hearing; confidentiality; **best interest of the minor; evidence of human**  
 16 **trafficking, sexual assault, domestic violence, coercion, duress, or**  
 17 **undue influence**

18 **A.** The court shall hear a request for authorization for a minor to marry in  
 19 chambers.

20 **B. The judge shall require that both the prospective husband and**  
 21 **prospective wife be present for the hearing and there shall be a separate in**  
 22 **camera interview of the prospective spouses.**

23 **C. In determining the best interest of the minor prospective spouse, the**  
 24 **court shall consider all of the following:**

- 25 **(1) Pregnancy of the prospective wife.**
- 26 **(2) If the prospective spouses are already living together.**
- 27 **(3) Housing and living conditions prior to the prospective marriage and**  
 28 **where the prospective spouses intend to live after the marriage.**
- 29 **(4) The ages of the prospective spouses.**
- 30 **(5) The age differential between the prospective spouses.**

1                   (6) How the prospective spouses came to know each other.

2                   (7) The stated reasons why each of the prospective spouses desires to  
3                   marry one another.

4                   (8) Consent of mother, father, or person having legal custody of the  
5                   minor.

6                   D. The judge may require evidence of proof of residency, educational  
7                   attainment, juvenile offense history, or criminal history to be produced.

8                   E. The judge shall conduct an inquiry to determine if there exists any  
9                   evidence that the minor is a victim of human trafficking, sexual assault,  
10                  domestic violence, coercion, duress, or undue influence. In conducting the  
11                  inquiry, the judge shall ask all of the following questions:

12                  (1) Whether one prospective spouse is in a position of authority over the  
13                  other prospective spouse.

14                  (2) Previous marriage or marriages of either of the prospective spouses.

15                  (3) Residency and length of residency of the prospective spouses.

16                  (4) How long the prospective spouses have known each other.

17                  (5) Length of relationship between the prospective spouses.

18                  (6) Any evidence of kidnaping, sexual assault, or domestic violence  
19                  between the prospective spouses.

20                  (7) Whether one of the prospective spouses was the victim of a sexual  
21                  offense committed by the other prospective spouse.

22                  (8) Evidence of domestic violence, spousal abuse, or sexual offenses  
23                  committed by either of the prospective spouses upon anyone.

24                  (9) Criminal history of the prospective spouses.

25                  (10) Whether either prospective husband or wife provided or promised  
26                  a third party anything of value in exchange for the marriage.

27                  (11) Evidence of maturity and self-sufficiency of the prospective spouses  
28                  through educational attainment or employment.

29                  (12) Evidence of at least eight hours of premarital counseling from the  
30                  prospective spouses.

1                    (13) Any history of any medical condition or chemical dependency of  
2                    either of the prospective spouses.

3                    F. If the judge finds any evidence of human trafficking, sexual assault,  
4                    domestic violence, coercion, or undue influence, he shall immediately report it  
5                    to local law enforcement or child protective services, and shall not authorize the  
                      marriage.

\_\_\_\_\_  
PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

2019 Regular Session  
HOUSE BILL NO. 252  
BY REPRESENTATIVE GAINES

# ACT No. 106

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT

2 To amend and reenact Civil Code Article 1968 and to repeal Title XIV of Book III of the  
3 Civil Code, comprised of Civil Code Articles 2982 through 2984, relative to aleatory  
4 contracts; to provide with respect to unlawful cause; to provide with respect to  
5 gaming, gambling, and wagering; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Civil Code Article 1968 is hereby amended and reenacted to read as  
8 follows:

9 Art. 1968. Unlawful cause

10 The cause of an obligation is unlawful when the enforcement of the  
11 obligation would produce a result prohibited by law or against public policy.

12 Examples of obligations with unlawful causes include those that arise from  
13 gaming, gambling, and wagering not authorized by law.

14 Revision Comments - 2019

15 (a) The second paragraph of this Article restates the principles of prior law  
16 contained in former Articles 2983 and 2984. It does not significantly change the law.  
17 The language creating exceptions of permissible gaming contracts under former  
18 Article 2983, which involved "games tending to promote skill in the use of arms,  
19 such as the exercise of the gun and foot, horse and chariot racing" has been deleted  
20 as anachronistic. The Constitution of Louisiana generally discourages "gaming,  
21 gambling, and wagering." See, e.g., La. Const. Art. XII, Sec. 6. The Louisiana  
22 Criminal Code also defines and prohibits gambling. See, e.g., R.S. 14:90. For  
23 specific examples of allowable games of chance, see, e.g., La. Const. Art. XII, Sec.  
24 6(A); R.S. 27:1 et seq.; R.S. 27:502. This Article does not affect the existing  
25 jurisprudence holding that casino markers extended to patrons are enforceable  
26 extensions of credit. See, e.g., *Strong v. Eldorado Casino Shreveport Joint Venture*,  
27 73 So. 3d 967 (La. App. 2 Cir. 2011); *Players Lake Charles, LLC v. Tribble*, 779 So.  
28 2d 1058 (La. App. 3 Cir. 2001); *TeleRecovery of Louisiana v. Major*, 734 So. 2d 947  
29 (La. App. 1 Cir. 1999); *TeleRecovery of Louisiana v. Gaulon*, 738 So. 2d 662 (La.  
30 App. 5 Cir. 1999).

1                   (b) The provision in former Article 2984, which refused an action for  
 2 recovery by a loser in a gaming or wagering contract in the absence of "fraud, deceit,  
 3 or swindling," has also been deleted in light of Article 2033, which denies recovery  
 4 of performance on an absolutely null contract except "in exceptional situations when,  
 5 in the discretion of the court, that recovery would further the interest of justice."

6                   (c) The definition of an aleatory contract contained in former Article 2982  
 7 has been deleted as unnecessary in light of existing Article 1912.

8                   Section 2. Title XIV of Book III of the Civil Code, comprised of Civil Code Articles  
 9 2982 through 2984, is hereby repealed in its entirety.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_

2019 Regular Session  
HOUSE BILL NO. 203  
BY REPRESENTATIVE GREGORY MILLER

# ACT No. 325

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT  
2 To amend and reenact Civil Code Articles 3249, 3267, 3269, and 3274 and R.S. 9:4801(5),  
3 4802(A)(5), (B), (C), and (F), 4803(A)(1) and (B), 4806, 4807(B), 4808(A), (B), (C),  
4 and (D)(1), 4811(A)(2), (B), and (D), 4812(A), (B), and (E)(1) and (2), 4813(D) and  
5 (E), 4820, 4821, 4822, 4823(A), (B), (C), (E), and (F), 4831, 4832(A)(introductory  
6 paragraph) and (1) and (B)(introductory paragraph) and (1), 4833(A), (B), (C), and  
7 (E), 4834, 4835(A) and (C), the heading of Subpart F of Part I of Chapter 2 of Code  
8 Title XXI of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950,  
9 4841(A), (B), (C)(introductory paragraph) and (3), (D), (E), and (F), 4842, and  
10 4852(A), to enact R.S. 9:4803(C) and (D), 4804, 4809, 4810, 4813(F), 4832(C) and  
11 (D), 4843, 4844, 4845, and 4846, and to repeal Civil Code Articles 2772, 2773,  
12 2774, 2775, 2776, 3268, and 3272 and R.S. 9:4802(G) and 4811(E), and to  
13 redesignate R.S. 9:4814, 4815, and 4822(M), relative to privileges on immovables;  
14 to provide for claims against owners and contractors; to provide for the amounts  
15 secured by claims and privileges; to provide for notice and requests for statements  
16 of amounts owed; to provide definitions of terms; to provide for the filing of a notice  
17 of contract; to provide for the furnishing and maintenance of bonds; to provide for  
18 the liability of sureties; to provide for the effectiveness and ranking of privileges; to  
19 provide for the preservation and extinguishment of claims and privileges; to provide  
20 for the filing of notice of contract and termination, statement of claim or privilege,  
21 affidavits, and notice of pendency of action; to provide for cancellation and  
22 effectiveness of notice of contract and cancellation of statements of claims or  
23 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.~~

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

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Comments - 2019

(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.

(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.

(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.

(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.

(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.

(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.

(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.

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 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).  
 46

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.

46 \* \* \*



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).

\* \* \*

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.  
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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

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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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(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. The correctness of~~ Insofar as the  
 19           rights of the person to whom or for whom the affidavit is given are concerned, the  
 20           facts recited in the affidavit shall be deemed to be true at the time of the inspection  
 21           and to remain true at the time of the filing of the mortgage, privilege, or other  
 22           document, and the correctness of those facts may not be controverted to affect the  
 23           priority of the rights of the person to whom or for whom it is given, unless actual  
 24           fraud by such person is ~~proven~~ proved. A person who gives a false ~~or fraudulent~~  
 25           affidavit shall be responsible for any loss or damage suffered by any person whose  
 26           rights are adversely affected.

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

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

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

10 Comments - 2019

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

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

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

41 (d) Subsection B, which continues a rule contained in the former provision,  
 42 has been revised in order to state more clearly the effect of a temporary suspension  
 43 of a work involving an existing building or other structure when notice of contract  
 44 has not been filed. A suspension of work of that nature for thirty days or more  
 45 causes that part of the work performed before the suspension to be considered, for  
 46 ranking purposes only, to be a separate work from the work performed afterward.

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.

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:~~

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

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-Spunner 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.

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



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:

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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~~

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1 ~~completion to subcontractors, journeymen, cartmen, workmen, laborers, mechanics,~~  
2 ~~furnishers of material or any other persons furnishing labor, skill, or material on the~~  
3 ~~said work who record and serve their claims in accordance with the requirements of~~  
4 ~~law.~~

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

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

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

13 (a) Before the work begins, have a written and signed contract with your  
14 contractor and have a payment bond issued. Before the work begins, make sure a  
15 notice of your contract and the bond are properly recorded in the parish mortgage  
16 records.

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

22 If you have further questions, contact a lawyer.

23 By signing below, you acknowledge that you have been provided with this  
24 notice.

25 \_\_\_\_\_  
26 Owner or Agent

27 \_\_\_\_\_  
28 Date

29 \* \* \*

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

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

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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~~ 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: \_\_\_\_\_