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Statutory Outline

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TITLE 9. CIVIL CODE-ANCILLARIES.

CHAPTER 2. PRIVILEGES ON IMMOVABLES.

PART I. PRIVATE WORKS ACT.

SUBPART A. LIABILITY OF OWNERS AND CONTRACTORS FOR THE IMPROVEMENT OF AN IMMOVABLE

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

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

- (1) Contractors, for the price of their work.
- (2) Laborers or employees of the owner, for the price of work performed at the site of the immovable.
- (3) Sellers, for the price of movables sold to the owner that become component parts of the immovable, or are consumed at the site of the immovable, or are consumed in machinery or equipment used at the site of the immovable.
- (4) Lessors, for the rent of movables used at the site of the immovable and leased to the owner by written contract.
- (5) Professional consultants engaged by the owner, and the professional subconsultants of those professional consultants, for the price of professional services rendered in connection with a work that is undertaken by the owner.

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

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

- (1) Subcontractors, for the price of their work.
- (2) Laborers or employees of the contractor or a subcontractor, for the price of work performed at the site of the immovable.
- (3) Sellers, for the price of movables sold to the contractor or a subcontractor that become component parts of the immovable, or are consumed at the site of the immovable, or are consumed in machinery or equipment used at the site of the immovable.
- (4) Lessors, for the rent of movables used at the site of the immovable and leased to the contractor or a subcontractor by written contract.

(5) Professional consultants engaged by the contractor or a subcontractor, and the professional subconsultants of those professional consultants, for the price of professional services rendered in connection with a work that is undertaken by the contractor or subcontractor.

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

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

D. Claims against the owner and the contractor granted by this Part are in addition to other contractual or legal rights the claimants may have for the payment of amounts owed them.

E. A claimant may assert his claim against either the contractor, his surety, or the owner without the joinder of the others. The claim shall not be subject to a plea of discussion or division.

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

G. Repealed by Acts 2019, No. 325, §3.

§4803. Amounts secured by claims and privileges

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

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

(2) Expenses incurred by the claimant or other person having a privilege, for the cost of delivering movables that become component parts of the immovable, or are consumed at the site of the immovable, or are consumed in machinery or equipment used at the site of the immovable, if the amounts are owed by the owner, contractor, or subcontractor to the claimant or person having the privilege.

(3) Amounts owed under collective bargaining agreements with respect to a laborer's or employee's wages or other compensation for which a claim or privilege is granted and which are payable to other persons for vacation, health and welfare, pension, apprenticeship and training, supplemental unemployment benefits, and other fringe benefits considered as wages by the secretary of labor of the United States in determining prevailing wage rates, unless the immovable upon which the work is performed is designed or intended to be occupied primarily as a residence by four families or less. Trustees, trust funds, or other persons to whom the employer is to make such payments may assert and enforce claims for the amounts in the same manner and subject to the same procedures provided for other amounts due laborers or employees granted a claim or privilege under this Part.

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

(1) The work is substantially completed or abandoned.

(2) A notice of termination of the work is filed.

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

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

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

§4804. Notices required of certain claimants

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

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

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

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

D. Before any subcontractor having a contractual relationship with another subcontractor, but no direct contractual relationship with the contractor, shall have a right of action to enforce a claim under this Part against the contractor or surety on the bond furnished by the contractor, he must give notice to the contractor at least thirty days prior to the institution of an action against the contractor, stating with substantial accuracy the amount claimed and the name of the other subcontractor for whom the labor or service was done or performed.

SUBPART B. DEFINITIONS

§4806. Owner defined; interest affected

A. An owner, co-owner, naked owner, usufructuary, other holder of a servitude, possessor, lessee, or other person having the right to use or enjoy an immovable or having an interest therein shall be deemed to be an owner under this Part.

B. The claims against an owner granted by R.S. 9:4802 are limited to the owner or owners who have contracted with the contractor and to any owner or owners who have agreed in writing to the price and work of

the contract made by another owner and have expressly agreed in writing to be liable for any claims granted by R.S. 9:4802. If more than one owner has contracted or expressly agreed in writing to be liable, each shall be solidarily liable for the claims.

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

D. The privileges granted by this Part upon a lessee's rights in the lease or buildings and other constructions shall be inferior and subject to the right of the lessor to dissolve the lease for nonperformance of the lessee's obligations, and to execute upon the lessee's rights and sell them in satisfaction of the obligations free of the privileges under this Part. If a sale of the lease is made in execution of the claims of the lessor, the privileges under this Part attach to that portion of the sale proceeds remaining after satisfaction of the claims of the lessor.

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

§4807. Contractor, general contractor, subcontractor defined

A. A contractor is one who contracts with an owner to perform all or a part of a work.

B. A general contractor is a contractor who either:

(1) Contracts to perform all or substantially all of a work.

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

C. A subcontractor is one who, by contract made directly with a contractor, or by a contract that is one of a series of contracts emanating from a contractor, is bound to perform all or a part of a work contracted for by the contractor.

§4808. Work defined

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

B. If written notice of a contract is properly filed within the time required by R.S. 9:4811, the work to be performed under the contract shall be deemed to be a work separate and distinct from other portions of the project undertaken by the owner. The contractor whose notice of contract is so filed shall be deemed a general contractor.

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

D. This Part does not apply to:

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

(2) The construction or other work on the permanent bed and structures of a railroad for which a privilege is granted by R.S. 9:4901.

(3) Public works performed by the state or any state board or agency or political subdivision of the state.

§4809. Substantial completion and abandonment of work defined

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

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

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

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

§4810. Miscellaneous definitions

For purposes of this Part:

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

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

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

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

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

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

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

(8) A "residential work" is a work for the construction, improvement, reconstruction, modification, or repair of an immovable occupied or designed to be occupied as a single-family residence or double-family residence.

SUBPART C. WORK PERFORMED BY GENERAL CONTRACTORS

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

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

(1) Shall be signed by the owner and contractor.

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

(3) Shall identify the parties and give their mailing addresses.

(4) Shall state the price of the work or, if no price is fixed, describe the method by which the price is to be calculated and give an estimate of it.

(5) Shall state when payment of the price is to be made.

(6) Shall describe in general terms the work to be done.

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

C. A notice of contract is not improperly filed because a proper bond is not attached.

D. A general contractor shall not enjoy any privilege arising under this Part if the price of the work stipulated or reasonably estimated in his contract exceeds one hundred thousand dollars unless notice of the

contract is timely filed. A general contractor who is deprived of his privilege by this Subsection shall not be entitled to file a statement of claim or privilege for any amounts due him.

E. Repealed by Acts 2019, No. 325, §3.

§4812. Bond required; terms and conditions

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

B. The amount of the bond shall not be less than the price of the work stated or estimated in the notice of contract.

C. The condition of the bond shall be that the surety guarantees:

(1) To the owner and to all persons having a claim against the contractor, or to whom the contractor is conventionally liable for work done under the contract, the payment of their claims or of all amounts owed them arising out of the work performed under the contract to which it is attached or for which it is given.

(2) To the owner, the complete and timely performance of the contract unless such guarantee is expressly excluded by the terms of the bond.

D. The bond of a legal surety attached to and filed with the notice of contract of a general contractor shall be deemed to conform to the requirements of this part notwithstanding any provision of the bond to the contrary, but the surety shall not be bound for a sum in excess of the total amount expressed in the bond.

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

(1) Extensions of time for the performance of the work shall not extinguish the obligation of the surety.

(2) No other amendment to the contract, or change or modification to the work, or impairment of the surety's rights of subrogation made without the surety's consent shall extinguish the obligations of the surety, but to the extent that the surety is materially prejudiced by the change or action, the surety shall be relieved of liability to the owner and shall be indemnified by the owner for any loss or damage suffered by the surety.

(3) A payment by the owner to the contractor before the time required by the contract shall not extinguish the obligation of the surety, but the surety shall be relieved of liability to the owner, and shall be indemnified by the owner for any loss or damage suffered by the surety.

§4813. Liability of the surety

A. The surety is liable without benefit of discussion or division.

B. If the total amount owed to persons to whom the surety is liable exceeds the total amount of the bond, the surety's liability shall be discharged in the following order:

(1) First, and pro rata, to persons who preserve their claims in the manner required by R.S. 9:4822.

(2) Second, and in the order in which they present their obligations to the surety, to persons who do not preserve their claims as required by R.S. 9:4822 but to whom the contractor is otherwise liable.

(3) Third, to the owner.

C. The liability of the surety is not extinguished by a deficiency in the amount of the bond, the failure to attach the bond to the notice of contract, or the failure to file the notice as required by R.S. 9:4811.

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

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

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

§4814. Redesignated as R.S. 9:4856 pursuant to Acts 2019, No. 325.

§4815. Redesignated as R.S. 9:4857 pursuant to Acts 2019, No. 325.

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

§4820. Privileges; effective date

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

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

(2) The work is begun by placing materials at the site of the immovable to be used in the work or conducting other work at the site of the immovable the effect of which is visible from a simple inspection and reasonably indicates that the work has begun. For these purposes, the "site of the immovable" is defined as the area within the boundaries of the property. In determining when work has begun, services rendered by a professional consultant, professional subconsultant, or other surveyor, architect, or engineer, or the placing of materials having an aggregate price of less than one hundred dollars on the immovable, driving of test piling, cutting or removal of trees and debris, placing of fill dirt, demolition of existing structures, and clearing, grading, or leveling of the land surface shall not be considered.

B.(1) If work for which notice of contract was not filed as required by R.S. 9:4811 is for the addition, modification, or repair of an existing building or other construction, the suspension of the work for thirty days or more shall cause that part of the work performed before the suspension to be considered, for the purposes of ranking privileges arising under this Part against the rights of third persons, a separate work from the work performed thereafter. A work is suspended if the cost of the work done, in labor and materials, is less than one hundred dollars during a period of thirty days or more.

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

C. A person acquiring or intending to acquire a mortgage, privilege, or other right in or on an immovable may conclusively rely upon an affidavit made by a qualified inspector to the effect that he inspected the immovable at a specified time and work had not then been commenced nor materials placed at its site, provided the inspection occurs, and the affidavit is filed, within four business days before or within four business days after the filing of the mortgage, privilege, or other document creating the right. Insofar as the rights of the person to whom or for whom the affidavit is given are concerned, the facts recited in the affidavit shall be deemed to be true at the time of the inspection and to remain true at the time of the filing of the mortgage, privilege, or other document, and the correctness of those facts may not be controverted to affect the priority of the rights of the person to whom or for whom it is given, unless actual fraud by such person is proved. A person who gives a false affidavit shall be responsible for any loss or damage suffered by any person whose rights are adversely affected.

D. Notwithstanding the other provisions of this Part, the privileges granted upon an immovable by R.S. 9:4801(5) and those securing a claim arising under R.S. 9:4802(A)(5) shall have no effect as to third persons acquiring rights in, to, or on the immovable before the statement of claim or privilege is filed.

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

§4821. Ranking of privileges arising under this Part

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

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

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

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

B. Except as otherwise provided in Subsection C of this Section, the privileges granted by this Part rank among themselves in the following order of priority, regardless of whether they arise from the same work or different works and regardless of the dates on which the privileges become effective as to third persons:

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

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

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

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

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

§4822. Preservation of claims and privileges

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

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

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

B. If a notice of contract is properly and timely filed in the manner provided by R.S. 9:4811, a person to whom a claim and privilege is granted by R.S. 9:4802 shall file a statement of his claim or privilege and deliver to the owner, if his address is given in the notice of contract, a copy of the statement of claim or privilege, no later than:

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

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

C. A general contractor to whom a privilege is granted by R.S. 9:4801, and whose privilege has been preserved in the manner provided by R.S. 9:4811, shall file a statement of his privilege no later than:

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

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

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

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

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

E. A notice of termination of the work:

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

(2) Shall be signed by the owner who contracted with the contractor or by that owner's representative. If the owner has transferred his rights in the immovable to another person, the notice of termination of the work may instead be signed by the owner's successor or his representative.

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

(a) The work has been substantially completed.

(b) The work has been abandoned by the owner.

(c) The general contractor is in default under the terms of the contract.

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

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

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

G. A notice of termination may be filed from time to time with respect to a specified area of an immovable. In that case, the time for preserving privileges or claims as specified in Subsection A or B of this Section shall commence with the filing of the notice of termination as to amounts owed and arising from the work done on that area of the immovable described in the notice of termination. This notice shall contain a complete property description of the specified area of the immovable and certify that the work performed on that area is substantially completed or has been abandoned.

H. A statement of a claim or privilege:

(1) Shall be in writing.

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

(3) Shall contain a reasonable identification of the immovable with respect to which the work was performed or movables or services were supplied or rendered.

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

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

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

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

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

J. If a person granted a claim and privilege under R.S. 9:4802 has given to an owner a notice complying with Subsection I of this Section, the owner shall notify that person within ten days after the substantial completion or abandonment of the work or the filing of notice of termination of the work. If the owner does not do so and if the person fails to file a statement of claim or privilege within the period provided by this Section, the failure shall not extinguish the person's claim against the owner granted by R.S. 9:4802(A), and the claim shall remain enforceable against the owner provided that an action for its enforcement is brought no later than

one year after the expiration of that period. Nevertheless, the privilege arising in favor of the person under R.S. 9:4802(B) shall be extinguished by his failure to file a timely statement of claim or privilege, regardless of whether the owner has failed to give him notice when required under this Subsection.

§4823. Extinguishment of claims and privileges

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

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

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

(3) The obligation that it secures is extinguished.

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

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

D. A privilege granted by this Part is extinguished if a bond is filed by the owner as provided by R.S. 9:4835.

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

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

SUBPART E. FILING; CANCELLATION; PEREMPTION

§4831. Filing; place of filing; contents

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

B. Each notice of contract, notice of termination of work, affidavit filed in accordance with R.S. 9:4820(C) or 4832(C), and other filing by an owner under this Part shall contain a complete property description of the immovable upon which the work is to be or has been performed. Each other filing under this Part shall contain either a complete property description of the immovable or another reasonable identification of the immovable. A statement of the name of the owner and street address or mailing address of the immovable without more shall not be sufficient to meet the requirements of this Subsection.

C. If the work is evidenced by a notice of contract that contains a complete property description of the immovable, reference in any subsequent filing to the notice of contract, together with its registry number or other appropriate recordation information, shall be sufficient to meet the requirements of Subsection B of this Section. If the work is evidenced by a notice of contract that contains either a complete property description of the immovable or another reasonable identification of the immovable, reference to the notice of contract, together with its registry number or other appropriate recordation information, shall be deemed a reasonable identification of the immovable in a statement of claim or privilege filed under this Part.

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

§4832. Cancellation of notice of contract

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

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

(2) The request contains or has attached to it the written concurrence of the contractor or a written receipt from the contractor acknowledging payment in full of all amounts due under the contract.

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

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

(2) The request contains or is accompanied by the written concurrence of or a written receipt from the contractor acknowledging payment in full of all amounts due under the contract.

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

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

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

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

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

A.(1) If a statement of claim or privilege is improperly filed or if the claim or privilege preserved by the filing of a statement of claim or privilege is extinguished, an owner or other interested person may require the person who filed the statement of the claim or privilege to give a written request for cancellation in the manner provided by law directing the recorder of mortgages to cancel the statement of claim or privilege from his records.

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

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

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

C. A person who has properly requested a written request for cancellation shall have an action pursuant to R.S. 44:114 against the person required to deliver the written request to obtain a judgment declaring the

claim or the privilege extinguished and directing the recorder of mortgages to cancel the statement of claim or privilege if the person required to give the written request fails or refuses to do so within the time required by Subsection A of this Section. If the written request for cancellation was requested under Paragraph (A)(2) of this Section, the judgment shall declare the statement of claim or privilege to be extinguished, and shall direct its cancellation, only insofar as it affects the owner who is entitled to cancellation and his interest in the immovable. The plaintiff may also seek recovery of the damages and attorney fees to which he may be entitled under this Section.

D. The recorder of mortgages shall cancel a statement of a claim or privilege from his records upon the filing with him by any person of a written request for cancellation in proper form or when he is ordered to do so by judgment of the court.

E. The effect of recordation of a statement of claim or privilege and the privilege preserved by it shall cease as to third persons unless a notice of pendency of action in accordance with Code of Civil Procedure Article 3752, identifying the suit required to be filed by R.S. 9:4823, is filed within one year after the date of filing the statement of claim or privilege. In addition to the requirements of Code of Civil Procedure Article 3752, the notice of pendency of action shall contain a reference to the recorded statement of claim or privilege. If the effect of recordation of a statement of claim or privilege has ceased for lack of timely filing of a notice of pendency of action, the recorder of mortgages upon receipt of a written signed application shall cancel the recordation of the statement of claim or privilege.

§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 notice of its reinscription, in the manner provided for the reinscription of mortgages, is properly and timely filed by an interested person with the recorder of mortgages in whose office the notice of contract is filed. A notice of reinscription may not be 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 notice of reinscription is filed unless a subsequent notice of reinscription is filed within that time.

§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 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 in the action.

B. If the recorder of mortgages finds the amount of the cash or certified funds, or the terms and amount of a bond deposited with him to be in conformity with this Section, he shall note his approval on the bond and make note of either the bond or of the cash or certified funds in the margin of the statement of claim or privilege or notice of pendency of action as it is recorded in the mortgage records and cancel the statement of claim or privilege or the notice of pendency of action from his records by making an appropriate notation in the margin of the recorded statement or notice. The bond shall not be recorded but shall be retained by the recorder of mortgages as a part of his records.

C. Any person who files a bond or other security to guarantee payment of an obligation secured by a privilege in accordance with the provisions of Subsection A of this Section shall give notice of the filing to the owner, the holder of the privilege, and the contractor.

SUBPART F. ENFORCEMENT; DELIVERY OF COMMUNICATIONS; PROOF OF DELIVERY OF MOVABLES

§4841. Enforcement of claims and privileges; concursus

A. After the period provided by R.S. 9:4822 for the filing of statements of claims or privileges has expired, the owner or any other interested person may convoke a concursus and shall cite all persons who have

preserved their claims against the owner or their privileges on the immovable to establish the validity and rank of their claims and privileges. The owner, the contractor, and the surety shall also be cited if they are not otherwise parties to the concursus.

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

C. Upon motion of the owner, the court shall order the other parties to the concursus to show cause why a judgment should not be entered discharging and cancelling their claims and privileges or discharging the owner from further responsibility to them. The motion shall be tried as a summary proceeding and shall be limited to a consideration of the following matters:

(1) Whether the proper amounts have been deposited by the owner into the registry of the court.

(2) Whether the asserted claims or privileges have been properly preserved.

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

(4) Whether the bond complies with the requirements of this Part.

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

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

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

(a) The full amount of the bond.

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

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

F. The attorney for the owner who convokes a concursus under this Section, or the attorney for a claimant or privilege holder who convokes the concursus when no other person has done so within ninety days after expiration of the time given by R.S. 9:4822 for claimants or privilege holders to file statements of their claims or privileges, shall be entitled to recover from the contractor and his surety a reasonable fee for his services in convoking the concursus. The fees awarded may be paid out of the funds deposited into the registry of the court but only after satisfaction of all valid claims and privileges.

G. The costs of the concursus taxable to the person who convokes it shall be paid in preference to other claims asserted.

§4842. Delivery of communications or documents

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

§4843. Receipt of communications or documents

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

§4844. Delivery by mail or commercial courier

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

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

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

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

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

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

§4845. Delivery by electronic means

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

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

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

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

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

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

SUBPART G. RESIDENTIAL TRUTH IN CONSTRUCTION ACT

§4851. Scope; definition

A. The provisions of this Subpart and the notice required to be given herein shall be nonwaivable and shall be applicable to all residential home improvements and shall be read and construed in pari materia with the other provisions of this Part.

B. For the purposes of this Subpart, residential home improvements shall include all improvements or construction which enhance the value or enjoyment of any real property occupied by the owner thereof principally as a single-family dwelling or residence if such works would entitle any person to lien rights against the property under the provisions of R.S. 9:4801 through 9:4842.

§4852. Notice

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

NOTICE OF LIEN RIGHTS

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

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

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

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

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

If you have further questions, contact a lawyer.

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

Owner or Agent

Date

B. The notice herein required shall not be considered a condition of the construction contract.

§4853. Copies of notice

A. A copy of the signed notice shall be given to the owner or agent who has affixed his signature thereto.

B. Every person who may be entitled to lien rights against the residential property for work to be done or material to be furnished pursuant to this Subpart shall be furnished a copy of the signed notice by the contractor upon request.

§4854. Lien rights unaffected

Nothing contained in this Subpart shall abrogate or interfere with the lien rights of any person otherwise entitled thereto pursuant to the provisions of this Part.

§4855. Penalty for violation

In the event any liens are perfected under the provisions of this Part against any immovable property for work or improvements covered under the provisions of this Subpart and the contractor has failed to comply with the provisions of this Subpart, or, if having technically complied with this Subpart, has willfully, knowingly, and unlawfully falsified any statements or fraudulently obtained the signature of the owner or his agent, such owner shall have a civil cause of action therefor, and shall be entitled to reasonable damages and attorney fees. The penalty provided for herein shall not apply if the contractor or subcontractor obtains a bond from a good and solvent surety in favor of the owner of the property on which the lien is placed pursuant to R.S. 9:4841, or reimburses the property owner in an amount sufficient to satisfy the lien, either in the form of a deduction from the original contract price or other refund and the owner so acknowledges receipt in writing.

SUBPART H. MISAPPLICATION OF PROCEEDS; RETAINAGE

§4856. Contractors; misapplication of payments prohibited; civil penalties; payment of claims, attorney fees and costs

A. No contractor, subcontractor, or agent of a contractor or subcontractor, who has received money on account of a contract for the construction, erection, or repair of a building, structure, or other improvement, including contracts and mortgages for interim financing, shall knowingly fail to apply the money received as necessary to settle claims to sellers of movables or laborers due for the construction or under the contract. Any seller of movables or laborer whose claims have not been settled may file an action for the amount due, including reasonable attorney fees and court costs, and for civil penalties as provided in this Section.

B. When the amount misapplied is one thousand dollars or less, the civil penalties shall be not less than two hundred fifty dollars nor more than seven hundred fifty dollars.

C. When the amount misapplied is greater than one thousand dollars, the civil penalties shall be not less than five hundred dollars nor more than one thousand dollars, for each one thousand dollars in misapplied funds.

D. A contractor, subcontractor, or agent of a contractor or subcontractor who is found by the court to have knowingly failed to apply construction contract payments as required in Subsection A shall be ordered by the court to pay to plaintiff the penalties provided in Subsection B or C, as may be applicable, and the amount due to settle the claim, including reasonable attorney fees and court costs.

§4857. Escrow of funds due under contract; procedures

A. When, under the provisions of this Part, a contract in the amount of fifty thousand dollars or more is entered into between an owner and a contractor and if in accordance with the terms of such contract funds earned by the contractor are withheld as retainage by the owner from periodic payments due to the contractor then such funds shall be deposited by the owner into an interest bearing escrow account. The provisions of this Section shall not apply to a contract for a single family residence or double family residence. The provisions of this Section also shall not apply to a contract for the construction or improvement of the following types of industrial facilities that are, or will be, engaged in activities defined or classified under one or more of the following subsectors, industry groups, or industries of the 1997 North American Industry Classifications System (NAICS):

- (1) 22111 electric power generation.
- (2) 321 wood products manufacturing.
- (3) 322 paper manufacturing.
- (4) 324 petroleum and coal products manufacturing.
- (5) 325 chemical manufacturing.
- (6) 326 plastics and rubber products manufacturing.
- (7) 331 primary metals manufacturing.

- (8) 562211/562212 hazardous and solid waste landfills.
- (9) 422710 bulk stations and materials.
- (10) 486110 crude oil pipelines.
- (11) 486910 refined petroleum products pipelines.
- (12) 486210 natural gas pipelines.
- (13) 486990 other pipelines.
- (14) 211112 natural gas processing plants.

B. An escrow account under the provisions of this Section shall be located at a qualified financial institution and shall be under the control of an escrow agent. The escrow account and escrow agent shall be selected by mutual agreement between the owner and the contractor.

C. Upon completion of the work that is the subject of the contract, the funds, including any interest located in the escrow account shall be released from escrow under the following conditions:

(1) If there are no existing claims by the owner, the whole amount shall be paid to the contractor within three business days upon receipt by the escrow agent of a written release signed by the contractor and the owner.

(2) If there is a dispute between the owner and contractor and the contract does not provide for binding arbitration of such dispute:

(a) Undisputed amounts shall be released by the escrow agent within three business days of receipt of a notarized request of the contractor.

(b) Disputed amounts that are the subject of a judicial proceeding shall be released by the escrow agent within three business days of the receipt of a final order by the court. Upon receipt of the order of the court, the escrow agent shall pay the contractor or owner such amounts as are determined by the court.

(3) If there is a dispute between the owner and contractor and the contract provides for binding arbitration of such dispute, the following shall occur:

(a) Undisputed amounts shall be released by the escrow agent within three business days of receipt of a notarized request of the contractor.

(b) Disputed amounts that are the subject of binding arbitration under the contract shall be released by the escrow agent within three business days of the receipt of a final order by the arbitrator who has been selected by mutual agreement between the owner and the contractor. Upon receipt of the order of the arbitrator, the escrow agent shall pay the contractor or owner such amounts as are determined by the arbitrator under the rules as defined in the contract between the owner and the contractor.

D. Receipt by the escrow agent or the qualified financial institution in which the escrow account is maintained of what purports to be a written release signed by the contractor and owner, or an order by a court or arbitrator, shall be a full release and discharge of the escrow agent for transfer of funds to the contractor. Neither the escrow agent nor the qualified financial institution in which the escrow account is maintained shall be held liable to any party based on any claim that the written release is unauthorized, forged, or otherwise fraudulent.

E. Neither the escrow agent nor the qualified financial institution in which the escrow account is maintained pursuant to the provisions of this Section shall have any liability to the owner, contractor, or any other person when complying with the provisions of this Section.

§4858. Contractor's retainage bond

A. The contractor may elect to furnish at the contractor's cost and without offset of the cost against the retainage amount a retainage bond equal to and in lieu of the amount of the retainage required by the contract whenever a contract between an owner and a contractor for the construction, alteration, or repair of any work requires the withholding of sums for retainage until after the recordation of formal acceptance of such work, or notice of default by the contractor or subcontractor, or substantial completion, or final payment exclusive of nonconforming work.

B. If the contractor elects to furnish a retainage bond, it shall be in a form designated by the contracting agency from a surety, within their underwriting limits, with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide.

PART II. OIL, GAS, AND WATER WELLS SUBPART A. IN GENERAL

§4861. Definitions

For purposes of this Part:

(1) A "claimant" is a person who is owed an obligation secured by the privilege established by R.S. 9:4862.

(2) "Hydrocarbons" are oil and gas occurring naturally in the earth and any other valuable liquid or gaseous substance found and produced in association with them.

(3) A "well" is one that is intended to:

(a) Explore for or produce hydrocarbons.

(b) Inject or dispose of substances, whether useful or not, produced from a well that is intended to explore for or produce hydrocarbons.

(c) Inject hydrocarbons or other substances into the earth to enhance or facilitate the production of hydrocarbons.

(d) Produce water for use in the operations of a well that is intended to explore for or produce hydrocarbons.

(4)(a) "Operations" are every activity conducted by or for a lessee on a well site for the purpose of:

(i) Drilling, completing, testing, producing, reworking, or abandoning a well.

(ii) Saving, treating, or disposing of hydrocarbons or other substances produced from a well.

(iii) Injecting substances into the earth to produce or enhance the production of hydrocarbons.

(b) "Operations" do not include an activity conducted for the purpose of transporting, handling, processing, treating, or otherwise dealing with:

(i) Liquid hydrocarbons produced or separated at the well site after being removed from a leasehold tank and delivered into a truck, barge, pipeline, or other facility for transportation away from the well site.

(ii) Hydrocarbons produced in gaseous form, or produced in association with those produced in gaseous form and not separated at the well site, after being delivered into a pipeline for transportation away from the well site or delivered to a plant at the well site for processing or manufacturing.

(iii) Repealed by Acts 2018, No. 245, §1.

(5)(a) An "operating interest" is a mineral lease or sublease of a mineral lease, or an interest in a lease or sublease that gives the lessee, either singly or in association with others, the right to conduct the operations giving rise to the claimant's privilege.

(b) A mineral lease or sublease or an interest in the lease or sublease, is not an operating interest if an owner has divested himself of the right to conduct the operations giving rise to the claimant's privilege by assignment, sublease, or another form of mineral right before the claimant's privilege is established.

(c) A contract, such as one which commonly is referred to in the industry as a "farm-out" or "farm-in", by which a lessee agrees to sublease or transfer all or part of his rights in a lease to another person, commonly referred to as a "farmee", upon the drilling of a well or completion of some other operations, but which does not then vest such interest in the farmee, is not an operating interest until the sublease or transfer is made, and until then the farmee is a contractor of the lessee for the purposes of this Part.

(6) A "lessee" is a person who owns an operating interest.

(7) An "operator" is a lessee who is personally bound by contract to the claimant or to a contractor from whom the claimant's activities giving rise to the privilege emanate.

(8) A "participating lessee" is a lessee who is not the operator, but who is personally bound by contract to the operator to pay or reimburse the operator for any part of the obligation secured by the privilege or for any part of the price of the contract of the contractor from whom the operations giving rise to the claimant's privilege emanate.

(9) A "non-participating lessee" is a lessee who is neither an operator nor a participating lessee. A non-participating lessee does not become a participating lessee because an operator, contractor, or the claimant has the right to recover all or part of the obligation secured by the privilege out of hydrocarbons attributable to the interest of the lessee in the operating interest or from the lessee's share of the proceeds derived from such hydrocarbons, or out of other property of the lessee.

(10) A "contractor" is a person, other than a lessee, who contracts with an operator to perform the operations giving rise to the claimant's privilege or who, by subcontract with a contractor of the operator or

through a series of subcontracts emanating from such a contractor, contracts to perform all or part of the operations contracted for by the operator.

(11) A "third person" is a person, including a lessee or operator, who is not contractually bound to the claimant for the obligation secured by a privilege or who has not expressly assumed the obligation.

(12) A "well site" is the area covered by:

(a) The operating interest.

(b) A unit in which the operating interest participates.

(c) A tract of land or the area covered by a servitude or predial lease of the lessee on which is located a well drilled to, producing from, or injecting substances into the area covered by the operating interest.

TITLE 38. PUBLIC CONTRACTS, WORKS AND IMPROVEMENTS.

§2242. Claimant defined; filing of sworn statements of amounts due; payment by contracting authority

A. "Claimant", as used in this Chapter, means any person to whom money is due pursuant to a contract with the owner or a contractor or subcontractor for doing work, performing labor, or furnishing materials or supplies for the construction, alteration, or repair of any public works, or for transporting and delivering such materials or supplies to the site of the job by a for-hire carrier, or for furnishing oil, gas, electricity, or other materials or supplies for use in machines used in the construction, alteration, or repair of any public works, including persons to whom money is due for the lease or rental of movable property used at the site of the immovable and leased to the owner, contractor, or subcontractor by written contract, and including registered or certified surveyors or engineers or consulting engineers, or licensed architects, or their professional subconsultants employed by the owner or by the contractor or subcontractor in connection with the building of any public work.

B. Any claimant may after the maturity of his claim and within forty-five days after the recordation of acceptance of the work by the governing authority or of notice of default of the contractor or subcontractor, file a sworn statement of the amount due him with the governing authority having the work done and record it in the office of the recorder of mortgages for the parish in which the work is done.

C.(1) To be entitled to assert the claim given by Subsection B of this Section the lessor of the movables shall deliver a copy of the lease to the owner not more than ten days after the movables are first placed at the site of the immovable for use in the work.

(2) The claim or privilege granted the lessor of the movables by Subsection B of this Section is limited to and secures only the part of the rentals accruing during the time the movable is located at the site of the immovable for use in a work. A movable shall be deemed not located at the site of the immovable for use in a work after:

(a) The work is substantially completed or abandoned; or

(b) The notice of termination of the work is filed; or

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

D. When an awarding authority makes final payment to the contractor without deducting the total amount of all outstanding claims so served on it or without obtaining a bond from the contractor to cover the total amount of all outstanding claims, the awarding authority shall become liable for the amount of these claims.

E. If an architect or engineer has not been employed by the contractor or subcontractor, he shall have no claim to or privilege on the funds due the contractor or subcontractor, nor shall such architect or engineer be within the coverage of the payment and performance bond required of the contractor by R.S. 38:2241.

F. In addition to the other provisions of this Section, if the materialman has not been paid by the subcontractor and has not sent notice of nonpayment to the general contractor and the owner, then the materialman shall lose his right to file a privilege or lien on the immovable property. The return receipt indicating that certified mail was properly addressed to the last known address of the general contractor and the owner and deposited in the U.S. mail on or before seventy-five days from the last day of the month in which the material was delivered, regardless of whether the certified mail was actually delivered, refused, or unclaimed satisfies the notice provision hereof or no later than the statutory lien period, whichever comes first. The provisions of this Subsection shall apply only to disputes arising out of recorded contracts.

§2247. Construction of Part

Nothing in this Part shall be construed to deprive any claimant, as defined in this Part and who has complied with the notice and recordation requirements of R.S. 38:2242(B), of his right of action on the bond furnished pursuant to this Part, provided that said action must be brought against the surety or the contractor or both within one year from the registry of acceptance of the work or of notice of default of the contractor; except that before any claimant having a direct contractual relationship with a subcontractor but no contractual relationship with the contractor shall have a right of action against the contractor or the surety on the bond furnished by the contractor, he shall in addition to the notice and recordation required in R.S. 38:2242(B) give written notice to said contractor within forty-five days from the recordation of the notice of acceptance by the owner of the work or notice by the owner of default, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor or service was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office in the state of Louisiana.

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