

# ***LIEN IN:*** AN OVERVIEW OF THE CURRENT STATE OF LOUISIANA CONSTRUCTION LIEN LAW

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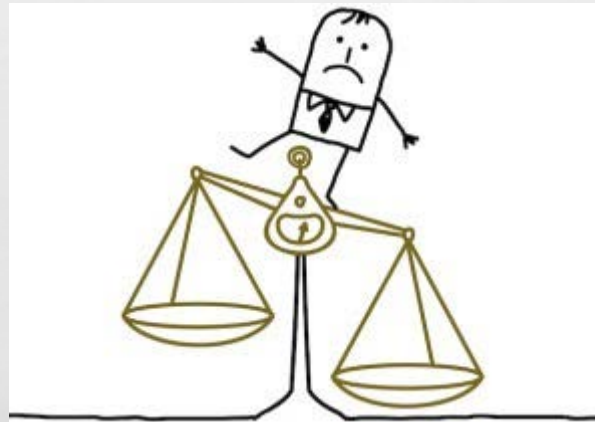
THE MOELLER FIRM LLC



*Louisiana*

# PURPOSE OF LOUISIANA LIEN LAW

BALANCE THE INTERESTS OF THOSE WHO  
CONTRIBUTE TO CONSTRUCTION PROJECTS



# WHO CONTRIBUTES?

Owners

Sureties

General contractors

Laborers and suppliers of the general contractors

Subcontractors

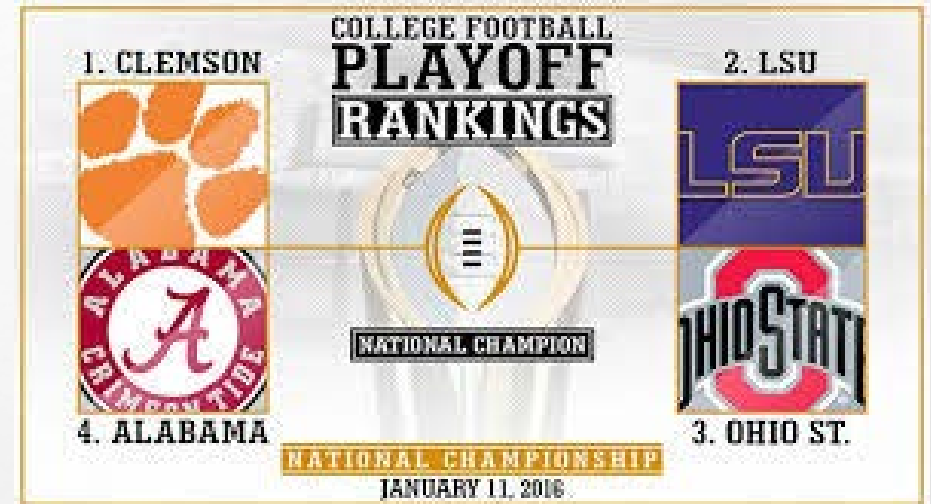
Laborers and suppliers of subcontractors

Sub-subcontractors and their laborers and suppliers

Equipment lessors

# RANKINGS

1. AD VALOREM TAXES OR ASSESSMENTS AGAINST THE LAND;
2. LABORERS' PRIVILEGE FOR THEIR WAGES;
3. A VENDOR'S PRIVILEGE OR MORTGAGE ON THE PROPERTY RECORDED PRIOR TO THE COMMENCEMENT OF WORK;
4. PRIVILEGES OF SUBCONTRACTORS, SELLERS AND LESSORS;
5. PRIVILEGES OF GENERAL CONTRACTORS, ARCHITECTS AND ENGINEERS; AND
6. ALL OTHER MORTGAGES AND PRIVILEGES.





# PRIVATE WORKS ACT *VS.* PUBLIC WORKS ACT

- PRIVATE WORKS ACT GRANTS A PRIVILEGE ON AN IMMOVABLE TO THOSE WHO CONTRIBUTE TO THE IMPROVEMENT OR REPAIR OF THE PROJECT
- PUBLIC PROPERTY CANNOT BE SUBJECT TO LIEN, BUT THOSE WHO CONTRIBUTE TO THE PROJECT MAY FREEZE FURTHER DISTRIBUTION OF THE CONTRACT

# LOUISIANA PRIVATE WORKS ACT

- PROJECTS COVERED

- MOST PRIVATE COMMERCIAL AND RESIDENTIAL CONSTRUCTION PROJECTS



*Does not apply to public works projects, well drilling and the like, or railroad construction.*

- CLAIMS AND PRIVILEGES

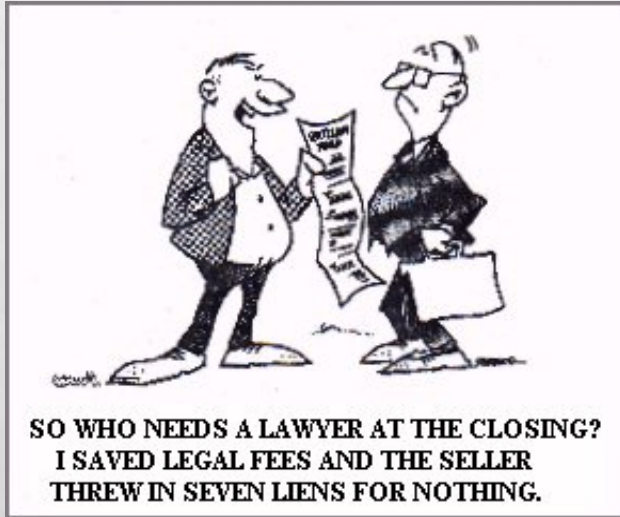
- THE RIGHT TO SUE THE OWNER AND CONTRACTOR DIRECTLY FOR THE AMOUNTS OWED; AND
- THE RIGHT TO ASSERT A LIEN OR PRIVILEGE AGAINST THE OWNER'S IMMOVABLE PROPERTY TO SECURE THE CLAIM

# LOUISIANA PUBLIC WORKS ACT

- PUBLIC WORKS CONTRACTS OVER \$25,000, CONTRACTOR MUST FURNISH NO LESS THAN 50% OF THE CONTRACT PRICE FOR THE PAYMENT BY THE CONTRACTOR TO "CLAIMANTS"
- "CLAIMANTS" INCLUDE "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;
  - 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
- SUPPLIERS TO MATERIAL SUPPLIERS ARE NOT ENTITLED TO A CLAIM UNDER THE PUBLIC WORKS ACT



# COMMON PITFALLS



# FAILURE TO TIMELY FILE A NOTICE OF CONTRACT

⚠️ UNDER THE PRIVATE WORKS ACT, FOR WORK OVER \$25,000, A GENERAL CONTRACTOR MUST FILE A NOTICE OF CONTRACT BEFORE WORK BEGINS TO HAVE A PRIVILEGE ON THE IMMOVABLE

⚠️ SIGNED BY THE OWNER/CONTRACTOR, IDENTIFY PARTIES AND THEIR MAILING ADDRESSES, STATE THE PRICE, OR METHOD FOR PRICE CALCULATION AND AN ESTIMATE, SCHEDULE FOR PAYMENT AND GENERALLY DESCRIBE THE WORK

⚠️ SUFFICIENT LEGAL DESCRIPTION – MAILING ADDRESS IS NOT ENOUGH



## LESSORS – EARLY NOTICE OF LEASE AND DELIVERY OF LEASE MATERIAL SUPPLIERS – 10 DAY NON-PAYMENT NOTICE (RESIDENTIAL)

- ⚠ LESSOR MUST DELIVER COPY OF NOTICE OF LEASE TO THE OWNER AND CONTRACTOR NOT MORE THAN 10 DAYS AFTER MOVABLES ARE FIRST PLACED AT THE SITE
- ⚠ PUBLIC WORKS ACT REQUIRES DELIVERY OF COPY OF THE LEASE ITSELF
- ⚠ LESSORS OF MOVABLES MUST HAVE A WRITTEN CONTRACT
- ⚠ PRIVATE WORKS ACT – FOR A PRIVILEGE AGAINST A RESIDENTIAL OWNER'S PROPERTY, MATERIAL SUPPLIERS MUST DELIVER A NOTICE OF NONPAYMENT TO THE OWNER AT LEAST 10 DAYS BEFORE FILING A LIEN

# SUPPLIER TO SUBCONTRACTORS 75 DAY NOTICE OF NONPAYMENT



- ⚠️ BOTH PRIVATE AND PUBLIC PROJECTS – MUST GIVE NOTICE OF NONPAYMENT TO GENERAL CONTRACTOR AND OWNER WITHIN 75 DAYS FROM LAST DAY OF MONTH MATERIAL WAS DELIVERED
  - ⚠️ CASE LAW – NOTICE REQUIRED FOR EACH OUTSTANDING INVOICE, NOT JUST THE LAST OUTSTANDING INVOICE
  - ⚠️ PURPOSE – GIVE THE GENERAL AN OPPORTUNITY TO WITHHOLD PAYMENT FROM ITS SUB, ISSUE JOINT CHECK, ETC.
  - ⚠️ NEW CASE – CONFIRMS NOTICE REQUIREMENT APPLIES TO BOTH RESIDENTIAL AND COMMERCIAL *AP INTERIORS V. CORYELL COUNTY TRADESMEN*

# NOTICE FOR SUB-SUB CONTRACTORS

## ADDITIONAL NOTICE FOR PERSONS CONTRACTING WITH SUBCONTRACTORS

⚠ UNDER CERTAIN CIRCUMSTANCES, PERSONS THAT HAVE CONTRACTED WITH SUBCONTRACTORS MUST GIVE WRITTEN NOTICE OF THEIR CLAIM TO THE GENERAL CONTRACTOR TO PRESERVE A RIGHT OF ACTION AGAINST THE GENERAL CONTRACTOR:

⚠ FOR PRIVATE WORKS ACT – WITHIN 30 DAYS OF RECORDATION OF NOTICE OF TERMINATION OF WORK

⚠ FOR PUBLIC WORKS ACT – WITHIN 45 DAYS OF RECORDATION OF NOTICE OF ACCEPTANCE BY OWNER

# TIMELY FILING OF LIEN/PRIVILEGE



## ⚠️ PRIVATE WORKS ACT:

⚠️ MUST FILE STATEMENT OF CLAIM AND PRIVILEGE IN MORTGAGE RECORDS WITHIN 30, 60, OR 70 DAYS FROM THE FILING OF NOTICE OF TERMINATION, SUBSTANTIAL COMPLETION, OR ABANDONMENT OF WORK

⚠️ TIME PERIOD AND TRIGGER OF LIEN FILING PERIOD DEPENDS ON WHO YOU ARE (GENERAL, SUBCONTRACTOR, ETC.) AND WHETHER A NOTICE OF CONTRACT WAS PROPERLY FILED BEFORE WORK BEGAN.

## ⚠️ PUBLIC WORKS ACT:

⚠️ MUST FILE SWORN STATEMENT OF AMOUNT DUE WITHIN 45 DAYS AFTER THE RECORDATION OF ACCEPTANCE OF THE WORK BY THE GOVERNING AUTHORITY OR OF NOTICE OF DEFAULT OF THE CONTRACTOR OR SUBCONTRACTOR. FILE WITH THE GOVERNING AUTHORITY AND RECORD IN THE MORTGAGE RECORDS FOR PARISH WHERE WORK IS PERFORMED

⚠️ CASE LAW – SUIT IS PREMATURE IF FILED BEFORE RECORDATION OF ACCEPTANCE OF THE WORK

# ENFORCEMENT

## FILING SUIT TO ENFORCE LIEN/CLAIM



### ⚠ PRIVATE WORKS ACT:

⚠ FILE SUIT AGAINST THE OWNER AND CONTRACTOR FOR THE ENFORCEMENT OF THE CLAIM AND/OR PRIVILEGE WITHIN ONE YEAR AFTER FILING THE STATEMENT OF CLAIM OR PRIVILEGE

### ⚠ PUBLIC WORKS ACT:

⚠ FILE SUIT AGAINST THE SURETY AND/OR THE CONTRACTOR WITHIN ONE YEAR FROM THE REGISTRY OF ACCEPTANCE OF THE WORK OR OF NOTICE OF DEFAULT OF THE CONTRACTOR

⚠ POSSIBLE CONCURSUS PROCEEDING BY PUBLIC OWNER OR CLAIMANT CITING ALL CLAIMANTS AND THE CONTRACTOR, SUBCONTRACTOR, AND SURETY ON THE BOND TO ASSERT CLAIMS

# RECENT DEVELOPMENTS

## *BEAR INDUSTRIES, INC. V. HANOVER INSURANCE CO.*

- Bear supplied materials to a subcontractor for construction of the Walmart Supercenter in New Roads, LA
- Dispute between general contractor and the subcontractor, general stopped making payments, Bear filed Private Works Act statement of claim and privilege and sued the subcontractor and the surety
- Trial and appellate courts found the “pay if paid” clause in the contract between the general and subcontractor was not a defense as it would render the protections to suppliers and laborers meaningless



# RECENT DEVELOPMENTS

## *WOODROW WILSON CONSTR. LLC V. ORLEANS PAR. SCH. BD.*

- Contractor sought retainage upon substantial completion
- Owner sought to offset the payment with liquidated damages of \$5,000/day for a 517 day delay in completion
- Contractor filed mandamus action to compel final payment
- Trial court denied the action, but the appellate court reversed finding that allowing an owner to circumvent a mandamus action by asserting a claim defeats the purpose of the Public Works Act

# PUBLIC WORKS ACT AMENDMENT

## SB 94, WHICH AMENDS LA RS 9 38:2191 (B)

1. Allows for interest on late payments by public owners
2. A payment is considered late if not paid by 45 days following an approved invoice
3. The interest is ½ percent daily maxed at 15%
4. Subcontractors who are in the situation of not being paid will share in the interest on a pro-rata basis

# KEY TAKEAWAYS

- Always Assume the Statutes Reign Supreme!
- Contractors – File, File, File !
- Sub-Subcontractors and Suppliers to Subcontractors – Notice, Notice, Notice!

QUESTIONS?