

STATE OF NEW YORK

3799--A

Cal. No. 350

2025-2026 Regular Sessions

IN SENATE

January 30, 2025

Introduced by Sens. COMRIE, HOYLMAN-SIGAL, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the real property actions and proceedings law, in relation to access to adjoining property to make improvements or repairs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 881 of the real property actions and proceedings
2 law, as added by chapter 220 of the laws of 1968, is amended to read as
3 follows:

4 § 881. Access to adjoining property to make improvements or repairs.

5 1. As used in this section: (a) the term "document" shall include but
6 not be limited to copies of any plans, specifications, surveys, engi-
7 neering reports or evidence of insurance for the work to be performed on
8 adjoining property;

9 (b) the term "licensee" shall refer to the owner or lessee, as appli-
10 cable, who seeks entry onto an adjoining property;

11 (c) the term "adjoining owner" shall refer to the owner or its lessee
12 of the property adjoining that of the licensee;

13 (d) the term "refuse", "refusal", or "refused" shall be deemed to
14 include instances where a request has been made in writing and there is
15 a subsequent absence of any affirmative response within a commercially
16 reasonable time;

17 (e) the term "state entity" shall refer to the state, any political
18 subdivision of the state, a public benefit corporation or a public
19 authority.

20 2. When [~~an owner or lessee~~] a licensee seeks to make improvements or
21 repairs to real property so situated that such improvements or repairs

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 cannot be made by the [~~owner or lessee~~] licensee in a commercially
2 reasonable manner without entering the premises of an adjoining owner
3 [~~or his lessee~~], and permission so to enter has been refused, the [~~owner~~
4 ~~or lessee seeking to make such improvements or repairs~~] licensee may
5 commence a special proceeding for a license so to enter pursuant to
6 article four of the civil practice law and rules. The petition and affi-
7 davits, if any, shall state the facts [~~making such entry necessary and~~
8 ~~the date or dates on which entry is sought~~] supporting the entry and the
9 date or dates upon which entry is sought. Any adjoining owner named as
10 a party in such proceeding shall, at the request of the licensee,
11 provide such licensee with such information as shall allow the licensee
12 to identify the lessees of the adjoining owner and join them in the
13 proceeding. Such license shall be granted by the court in an appropriate
14 case and upon such other terms as justice requires. The licensee shall
15 be liable to the adjoining owner [~~or his lessee~~] for actual damages
16 occurring as a result of the entry.

17 3. The purposes for which a licensee may seek permission to enter an
18 adjoining property pursuant to this section shall include, without limi-
19 tation:

20 (a) Preconstruction survey to document the existing conditions of the
21 adjoining property;

22 (b) The installation, maintenance, inspection, repair, replacement
23 and/or removal of: (i) vibration, crack or optical monitoring devices on
24 or within any existing improvements on the adjoining property; (ii)
25 sheds, bridges, netting or other protective covering over the roof,
26 facades, windows, skylights, mechanical equipment, chimneys or other
27 exterior portions of buildings or yards, walkways, driveways or other
28 open areas on the adjoining property; (iii) scaffolding on or over the
29 adjoining property; (iv) sheeting, shoring, bracing or other retaining
30 structures needed for demolition, support or excavation; (v) foundation
31 or building supports, including, without limitation, wall ties, tie-
32 backs, anchors, straps and underpinning, for any demolition, new or
33 existing improvements on the premises of the licensee or adjoining
34 owner, including, without limitation, party walls; or (vi) flashing,
35 sealing or other materials or equipment needed to establish the weath-
36 er-proof integrity of any wall, foundation or other exterior portion of
37 a building on the adjoining property;

38 (c) Temporary projections or intrusions into the airspace of the
39 adjoining property as necessary to complete the proposed improvements or
40 repairs;

41 (d) Temporary or permanent relocation, extension or offsetting of any
42 chimneys, vents, flues, exhausts or other rooftop equipment on the
43 adjoining property, as required by applicable law;

44 (e) Construction staging necessary to complete any work on the adjoin-
45 ing property; or

46 (f) The undertaking of such other measures as may be required by
47 applicable law or good construction practice.

48 4. The grant of any permission pursuant to this section shall be
49 subject to the following conditions:

50 (a) The exercise of any right of entry to the adjoining property shall
51 be upon reasonable prior notice to the adjoining owner, as applicable
52 and as the court may establish, except in cases of an emergency posing
53 an immediate threat to the safety of persons or property;

54 (b) The licensee shall provide to the adjoining owner, as applicable
55 and as reasonably practicable but no later than the delivery date of the
56 applicable notice required pursuant to paragraph (a) of this subdivi-

1 sion, a good faith projection of the dates and estimated duration of any
2 entry to the adjoining property. The licensee shall thereafter make
3 commercially reasonable efforts to adhere to such dates and durations or
4 provide timely notification of changes thereto;

5 (c) Where permission includes a right to install, maintain, inspect,
6 repair, replace or remove any devices, structures, materials or equip-
7 ment on the adjoining property, the grantee licensee shall provide to
8 the adjoining owner, as applicable, copies of any relevant documents
9 prior to commencement of such work;

10 (d) The licensee and/or any contractor, consultant or agent thereof
11 that accesses the adjoining property pursuant to the license shall
12 procure and maintain commercial general liability insurance for damage
13 to persons or property, naming the adjoining owner and/or its lessee(s),
14 as applicable and made known to licensee, as additional insureds, in
15 such amounts as are commercially reasonable for the entry to the adjoining
16 property. The licensee shall provide the adjoining owner and its
17 lessees, as applicable, with relevant documents; and

18 (e) The licensee shall be required to reasonably compensate the
19 adjoining owner for the use and occupancy of the adjoining premises.

20 5. The court, in granting a license or otherwise resolving a proceed-
21 ing brought pursuant to this section, shall be authorized to:

22 (a) consider evidence that either party failed to comply with the
23 terms of any existing or previously existing license respecting the same
24 property, or failed to respond to a written request within a commercial-
25 ly reasonable time;

26 (b) obligate the licensee to reimburse the adjoining owner for reason-
27 able architect's and/or engineer's fees incurred in connection with the
28 review of relevant documents for the installation, maintenance,
29 inspection, repair, replacement or removal of devices, structures, mate-
30 rials or equipment on the adjoining property;

31 (c) approve, and obligate the adjoining owner to accept such documents
32 for the installation, maintenance, inspection, repair, replacement or
33 removal of devices, structures, materials or equipment on the adjoining
34 property as the licensee may present during the proceeding;

35 (d) approve, and obligate the licensee to accept reasonable comments
36 on documents propounded by the adjoining owner;

37 (e) insure for damage to property and persons if there is unique,
38 physical occurrence causing physical damage to property or persons
39 caused by the access; and

40 (f) award reasonable attorneys' fees to either party upon a finding
41 that the other party acted in bad faith or engaged in willful misconduct
42 in seeking, denying, or conditioning its approval of the rights of entry
43 that are the subject of the proceeding.

44 6. Notwithstanding subdivisions two and five of this section, where
45 the adjoining property to which the licensee seeks access is owned,
46 leased or otherwise occupied by a state entity, the court shall not
47 grant a license.

48 § 2. The real property actions and proceedings law is amended by
49 adding a new section 882 to read as follows:

50 § 882. Severability. If any provision of this article or the applica-
51 tion thereof to any person or circumstances is held invalid, the remain-
52 der of the article and the application of such provision to other
53 persons or circumstances shall not be affected thereby.

54 § 3. This act shall take effect immediately.