

# STATE OF NEW YORK

8710

2019-2020 Regular Sessions

## IN ASSEMBLY

October 23, 2019

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Housing

AN ACT to amend the administrative code of the city of New York, in relation to establishing escrow accounts to protect property owners and their tenants from damages resulting from construction on adjoining property

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

1 Section 1. The administrative code of the city of New York is amended  
2 by adding a new section 28-103.34.1 to read as follows:

3 § 28-103.34.1 Developers' escrow accounts. 1. Definitions. As used in  
4 this section, the following terms shall have the following meanings:

5 ADJOINING OWNER. An owner of property where:

6 (i) such property shares a property line with a developer's property;  
7 or

8 (ii) such property is a historic property within a lateral distance of  
9 ninety feet from a developer's property line.

10 DEVELOPER. Any individual or entity filing for a permit from the  
11 department of buildings.

12 2. Any developer filing plans for a permit with the department of  
13 buildings for the construction of a new building, demolition of an  
14 existing building, or alteration of an existing building that includes  
15 underpinning, earth movement, excavation within five to ten feet of a  
16 property line, and/or excavation to a depth of over ten feet, shall,  
17 prior to the department's grant of any permit for such activity, deposit  
18 in an escrow account an amount of at least twenty thousand dollars  
19 multiplied by the number of adjoining owners to such developer's proper-  
20 ty. The money deposited into such escrow account shall be used only for  
21 the payment of any adjoining owners' legal and engineering fees result-  
22 ing from the negotiation of a license agreement between adjoining owners  
23 and such developer, and/or for the payment of such adjoining owners'

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

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1 legal fees resulting from a proceeding brought pursuant to section eight  
2 hundred eighty-one of the real property actions and proceedings law. The  
3 department shall not issue a building permit for any developer unless  
4 and until such developer provides the department with (i) written proof  
5 of such deposits into such escrow account; and (ii) a map of such devel-  
6 oper's property including all adjoining owners with the address of each  
7 such adjoining owner labeled.

8 3. A developer depositing money into an escrow account pursuant to  
9 subdivision two of this section, shall deposit into a separate escrow  
10 account, a dollar amount of at least fifteen percent of the total esti-  
11 imated cost of the project for which such developer has filed for a  
12 permit. The money deposited into escrow pursuant to this subdivision  
13 shall be for the purpose of:

14 (i) paying any legal fees incurred by adjoining owners in the course  
15 of litigation with such developer resulting from damages to such adjoin-  
16 ing owner's property, where such developer is found to be at fault for  
17 such damages;

18 (ii) to cover the costs of any actual damages to adjoining owners'  
19 property caused by such developer; and/or

20 (iii) any relocation costs incurred by tenants of an adjoining owner's  
21 property who are displaced due to damages to such adjoining owner's  
22 property caused by such developer.

23 4. Any escrow accounts created pursuant to subdivision two or three of  
24 this section shall be administered by the office of the New York city  
25 comptroller.

26 5. Where the property of any adjacent owner is damaged by construction  
27 conducted by a developer, the department of buildings shall immediately  
28 issue a stop work order to such developer upon notification of such  
29 damages by such adjacent owner or developer. Such developer who has been  
30 issued a stop work order shall create and submit to the department and  
31 to such adjoining owner's engineer, a plan for mitigation of damages.  
32 Such developer shall not resume construction until such developer has  
33 received from the department and from such adjoining owner's engineer  
34 approvals to resume construction, in writing on the letterheads of each,  
35 which shall be provided to such adjoining owner and developer within  
36 three days of their execution.

37 6. The office of the New York city comptroller shall establish a  
38 procedure for adjoining owners and tenants who wish to file claims  
39 against the funds set aside pursuant to this section. Such procedure  
40 shall provide for a complete resolution of such claims within sixty days  
41 from the date of their commencement.

42 7. Any funds deposited by a developer into an escrow account pursuant  
43 to subdivision two or three of this section that are not claimed by an  
44 aggrieved adjoining owner or tenant within six months after the depart-  
45 ment certifies the completion of such developer's project shall be  
46 returned to such developer.

47 8. The existence and administration of, and disbursements from, the  
48 escrow funds deposited by a developer pursuant to subdivision two or  
49 three of this section shall remain unaffected by such developer's decla-  
50 ration of bankruptcy and/or assignment of assets to any other individual  
51 or entity.

52 9. The department shall not impose any fine or other penalty against  
53 any adjoining owner, for any violation of the provisions of this title  
54 that occur as a result of damages caused by a developer's activities  
55 which violate this section.

1     § 2. This act shall take effect on the nineteenth day after it shall  
2 have become a law. Effective immediately, the addition, amendment  
3 and/or repeal of any rule or regulation necessary for the implementation  
4 of this act on its effective date are authorized to be made and  
5 completed on or before such effective date.