

STATE OF NEW YORK

8430

IN SENATE

February 28, 2022

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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. When an owner or lessee seeks to make improvements or repairs to real
6 property so situated that such improvements or repairs cannot be made by
7 the owner or lessee without entering the premises of an adjoining owner
8 or his lessee, and permission so to enter has been refused, the owner or
9 lessee seeking to make such improvements or repairs may commence a
10 special proceeding for a license so to enter pursuant to article four of
11 the civil practice law and rules. The petition and affidavits, if any,
12 shall state the facts making such entry necessary and the date or dates
13 on which entry is sought. Any adjoining owner or lessee named as a party
14 in such proceeding may, at the request of the owner or lessee seeking
15 such entry, provide such owner or lessee with such information as shall
16 allow the owner or lessee to identify the lessees of the adjoining owner
17 and join them in the proceeding. Such license shall be granted by the
18 court in an appropriate case and upon such other terms as justice
19 requires. The licensee shall be liable to the adjoining owner or his
20 lessee for actual damages occurring as a result of the entry.

21 2. The purposes for which an owner or lessee may seek permission to
22 enter an adjoining property pursuant to this section shall include,
23 without limitation:

24 a. Preconstruction survey to document the existing conditions of the
25 adjoining property;

26 b. The installation, maintenance, inspection, repair, replacement
27 and/or removal of: (i) vibration, crack or optical monitoring devices on

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

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1 or within any existing improvements on the adjoining property; (ii)
2 sheds, bridges, netting or other protective covering over the roof,
3 facades, windows, skylights, chimneys or other exterior portions of
4 buildings or yards, walkways, driveways or other open areas on the
5 adjoining property; (iii) scaffolding on or over the adjoining property;
6 (iv) sheeting, shoring, bracing or other retaining structures needed for
7 demolition or support of excavation; (v) foundation or building
8 supports, including, without limitation, wall ties, tie-backs, anchors,
9 straps and underpinning, for any demolition, new or existing improve-
10 ments, including, without limitation, party walls, on the premises of
11 the grantee or adjoining owner; or (vi) flashing, sealing or other mate-
12 rials or equipment needed to establish the weatherproof integrity of any
13 wall, foundation or other exterior portion of a building on the adjoin-
14 ing property;

15 c. Temporary projections or intrusions into the airspace of the
16 adjoining property as necessary to complete the proposed improvements or
17 repairs;

18 d. Temporary or permanent relocation, extension or offsetting of any
19 chimneys, vents, flues, exhausts or other rooftop equipment on the
20 adjoining property, as required by applicable law;

21 e. Construction staging necessary to complete any work on the adjoin-
22 ing property; or

23 f. The undertaking of such other measures as may be required by appli-
24 cable law or good construction practice.

25 3. The grant of any permission pursuant to this section shall be
26 subject to the following conditions:

27 a. The exercise of any right of entry to the adjoining property shall
28 be upon reasonable prior notice to the adjoining owner or lessee, as
29 applicable and as the court may establish, except in cases of an emer-
30 gency posing an immediate threat to the safety of persons or property;

31 b. The grantee shall provide to the adjoining owner or lessee, as
32 applicable and as reasonably practicable but no later than the deliv-
33 ery date of the applicable notice required pursuant to paragraph a of
34 this subdivision, a good faith projection of the dates and estimated
35 duration of any entry to the adjoining property. The grantee shall ther-
36 eafter make diligent efforts to adhere to such dates and durations;

37 c. Where permission includes a right to install, maintain, inspect,
38 repair, replace or remove any devices, structures, materials or equip-
39 ment on the adjoining property, the grantee shall provide to the adjoin-
40 ing owner or lessee, as applicable, copies of any relevant approved
41 documents prior to commencement of such work;

42 d. The grantee and any contractor, consultant or agent thereof that
43 accesses the adjoining property pursuant to the license shall procure
44 and maintain commercial general liability insurance for damage to
45 persons or property, naming the owner and any applicable lessee of the
46 adjoining property as additional insureds, in such amounts as are
47 commercially reasonable for the entry to the adjoining property. The
48 grantee shall provide the owner and any applicable lessee of the adjoin-
49 ing property with relevant approved documents; and

50 e. The grantee shall be required to reasonably compensate the adjoin-
51 ing owner or their lessee for the use and occupancy of the adjoining
52 premises.

53 4. The court, in granting a license or otherwise resolving a proceed-
54 ing brought pursuant to this section, shall be authorized to:

1 a. Consider evidence that either party failed to comply with the terms
2 of any existing or previously existing license respecting the same prop-
3 erty;

4 b. Obligate the grantee to reimburse the owner or lessee, as applica-
5 ble, of the adjoining property for reasonable architect's and/or engi-
6 neer's fees incurred in connection with the review of relevant documents
7 for the installation, maintenance, inspection, repair, replacement or
8 removal of devices, structures, materials or equipment on the adjoining
9 property;

10 c. Approve, and obligate the grantee or the owner, as applicable, of
11 the adjoining property to accept such documents for the installation,
12 maintenance, inspection, repair, replacement or removal of devices,
13 structures, materials or equipment on the adjoining property as the
14 grantee may present during the proceeding;

15 d. Approve, and obligate the grantee to accept reasonable comments on
16 documents propounded by the adjoining owner or tenant or their expert;

17 e. Insure for property and person if there is unique, physical occur-
18 rence causing physical damage to property or persons; and

19 f. Award reasonable attorneys' fees to either party upon a finding
20 that the other party acted in bad faith or engaged in willful misconduct
21 in seeking, denying, or conditioning its approval of the rights of entry
22 that are the subject of the proceeding.

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

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

29 § 3. This act shall take effect immediately.