

STATE OF NEW YORK

8430--A

IN SENATE

February 28, 2022

Introduced by Sens. COMRIE, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 the term "document" shall include but not be
6 limited to copies of any plans, specifications, surveys, engineering
7 reports or evidence of insurance for the work to be performed on adjoining
8 property.

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

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

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

4 a. Preconstruction survey to document the existing conditions of the
5 adjoining property;

6 b. The installation, maintenance, inspection, repair, replacement
7 and/or removal of: (i) vibration, crack or optical monitoring devices on
8 or within any existing improvements on the adjoining property; (ii)
9 sheds, bridges, netting or other protective covering over the roof,
10 facades, windows, skylights, mechanical equipment, chimneys or other
11 exterior portions of buildings or yards, walkways, driveways or other
12 open areas on the adjoining property; (iii) scaffolding on or over the
13 adjoining property; (iv) sheeting, shoring, bracing or other retaining
14 structures needed for demolition, support of excavation; (v) foundation
15 or building supports, including, without limitation, wall ties, tie-
16 backs, anchors, straps and underpinning, for any demolition, new or
17 existing improvements, on the premises of the grantee or adjoining
18 owner; including, without limitation, party walls; or (vi) flashing,
19 sealing or other materials or equipment needed to establish the weather-
20 proof integrity of any wall, foundation or other exterior portion of a
21 building on the adjoining property;

22 c. Temporary projections or intrusions into the airspace of the
23 adjoining property as necessary to complete the proposed improvements or
24 repairs;

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

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

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

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

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

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

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

49 d. The grantee and any contractor, consultant or agent thereof that
50 accesses the adjoining property pursuant to the license shall procure
51 and maintain commercial general liability insurance for damage to
52 persons or property, naming the owner and any applicable lessee of the
53 adjoining property made known to grantee as additional insureds, in such
54 amounts as are commercially reasonable for the entry to the adjoining
55 property. The grantee shall provide the owner and any applicable lessee
56 of the adjoining property with relevant approved documents; and

1 e. The grantee shall be required to reasonably compensate the adjoining
2 owner or their lessee for the use and occupancy of the adjoining
3 premises.

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

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

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

15 c. Approve, and obligate the lessee or the owner, as applicable, of
16 the adjoining property to accept such documents for the installation,
17 maintenance, inspection, repair, replacement or removal of devices,
18 structures, materials or equipment on the adjoining property as the
19 grantee may present during the proceeding;

20 d. Approve, and obligate the lessee to accept reasonable comments on
21 documents propounded by the adjoining owner or lessee or their expert;

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

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

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

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

34 § 3. This act shall take effect immediately.