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:

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

§ 881. Access to adjoining property to make improvements or repairs. **1. As used in this section the term "document" shall include but not be limited to copies of any plans, specifications, surveys, engineering reports or evidence of insurance for the work to be performed on adjoining property.**

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

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

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

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

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

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

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

e. Construction staging necessary to complete any work on the adjoining property; or

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

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

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

b. The grantee shall provide to the adjoining owner or lessee, as applicable and as reasonably practicable but no later than the delivery date of the applicable notice required pursuant to paragraph a of this subdivision, a good faith projection of the dates and estimated duration of any entry to the adjoining property. The grantee shall thereafter make diligent efforts to adhere to such dates and durations;

c. Where permission includes a right to install, maintain, inspect, repair, replace or remove any devices, structures, materials or equipment on the adjoining property, the grantee shall provide to the adjoining owner or lessee, as applicable, copies of any relevant documents prior to commencement of such work;

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

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

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

a. Consider evidence that either party failed to comply with the terms of any existing or previously existing license respecting the same property;

b. Obligate the grantee to reimburse the owner or lessee, as applicable, of the adjoining property for reasonable architect's and/or engineer's fees incurred in connection with the review of relevant documents for the installation, maintenance, inspection, repair, replacement or removal of devices, structures, materials or equipment on the adjoining property;

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

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

e. Insure for property and person if there is unique, physical occurrence causing physical damage to property or persons; and

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

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

§ 882. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 3. This act shall take effect immediately.