STATE OF NEW YORK

1321

2023-2024 Regular Sessions

IN ASSEMBLY

January 17, 2023

Introduced by M. of A. RAJKUMAR -- read once and referred 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:

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: (a) 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;**

(b) the term "licensee" shall refer to the owner or lessee, as applicable, who seeks entry onto an adjoining property;

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

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

2. When [~~an owner or lessee~~] **a licensee** seeks to make improvements or repairs to real property so situated that such improvements or repairs cannot be made by the [~~owner or lessee~~] **licensee in a commercially reasonable manner** 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~~] **licensee** 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 affi-

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

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davits, if any, shall state the facts [~~making such entry necessary and the date or dates on which entry is sought~~] supporting the entry and the date or dates upon which entry is sought. Any adjoining owner named as a party in such proceeding shall, at the request of the licensee, provide such licensee with such information as shall allow the licensee 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.

3. The purposes for which a licensee 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 or 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 licensee 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, 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 licensee shall provide to the adjoining owner, 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 licensee shall thereafter make commercially reasonable efforts to adhere to such dates and durations or provide timely notification of changes thereto;

(c) Where permission includes a right to install, maintain, inspect, repair, replace or remove any devices, structures, materials or equip-

ment on the adjoining property, the grantee licensee shall provide to the adjoining owner, as applicable, copies of any relevant documents prior to commencement of such work;

(d) The licensee and/or 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 adjoining owner and/or its lessee(s), as applicable and made known to licensee, as additional insureds, in such amounts as are commercially reasonable for the entry to the adjoining property. The licensee shall provide the adjoining owner and its lessees, as applicable, with relevant documents; and

(e) The licensee shall be required to reasonably compensate the adjoining owner 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, or failed to respond to a written request within a commercially reasonable time;

(b) obligate the licensee to reimburse the adjoining owner 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 adjoining owner 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 licensee may present during the proceeding;

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

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