

# STATE OF NEW YORK

1305

2023-2024 Regular Sessions

## IN SENATE

January 11, 2023

Introduced by Sens. COMRIE, SEPULVEDA -- 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 Assem-  
bly, 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: (a) the term "document" shall include but  
6 not be limited to copies of any plans, specifications, surveys, engi-  
7 neering reports or evidence of insurance for the work to be performed on  
8 adjoining property;

9 (b) the term "licensee" shall refer to the owner or lessee, as appli-  
10 cable, who seeks entry onto an adjoining property;

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

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

17 2. When [~~an owner or lessee~~] a licensee seeks to make improvements or  
18 repairs to real property so situated that such improvements or repairs  
19 cannot be made by the [~~owner or lessee~~] licensee in a commercially  
20 reasonable manner without entering the premises of an adjoining owner  
21 [~~or his lessee~~], and permission so to enter has been refused, the [~~owner~~  
22 ~~or lessee seeking to make such improvements or repairs~~] licensee may  
23 commence a special proceeding for a license so to enter pursuant to  
24 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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1 davits, if any, shall state the facts [~~making such entry necessary and~~  
2 ~~the date or dates on which entry is sought~~] supporting the entry and the  
3 date or dates upon which entry is sought. Any adjoining owner named as  
4 a party in such proceeding shall, at the request of the licensee,  
5 provide such licensee with such information as shall allow the licensee  
6 to identify the lessees of the adjoining owner and join them in the  
7 proceeding. Such license shall be granted by the court in an appropriate  
8 case and other terms as justice requires. The licensee shall  
9 be liable to the adjoining owner [~~or his lessee~~] for actual damages  
10 occurring as a result of the entry.

11 3. The purposes for which a licensee may seek permission to enter an  
12 adjoining property pursuant to this section shall include, without limi-  
13 tation:

14 (a) Preconstruction survey to document the existing conditions of the  
15 adjoining property;

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

32 (c) Temporary projections or intrusions into the airspace of the  
33 adjoining property as necessary to complete the proposed improvements or  
34 repairs;

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

38 (e) Construction staging necessary to complete any work on the adjoin-  
39 ing property; or

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

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

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

48 (b) The licensee shall provide to the adjoining owner, as applicable  
49 and as reasonably practicable but no later than the delivery date of the  
50 applicable notice required pursuant to paragraph (a) of this subdivi-  
51 sion, a good faith projection of the dates and estimated duration of any  
52 entry to the adjoining property. The licensee shall thereafter make  
53 commercially reasonable efforts to adhere to such dates and durations or  
54 provide timely notification of changes thereto;

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

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

4 (d) The licensee and/or any contractor, consultant or agent thereof  
5 that accesses the adjoining property pursuant to the license shall  
6 procure and maintain commercial general liability insurance for damage  
7 to persons or property, naming the adjoining owner and/or its lessee(s),  
8 as applicable and made known to licensee, as additional insureds, in  
9 such amounts as are commercially reasonable for the entry to the adjoining  
10 property. The licensee shall provide the adjoining owner and its  
11 lessees, as applicable, with relevant documents; and

12 (e) The licensee shall be required to reasonably compensate the  
13 adjoining owner for the use and occupancy of the adjoining premises.

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

16 (a) consider evidence that either party failed to comply with the  
17 terms of any existing or previously existing license respecting the same  
18 property, or failed to respond to a written request within a commercial-  
19 ly reasonable time;

20 (b) obligate the licensee to reimburse the adjoining owner for reason-  
21 able architect's and/or engineer's fees incurred in connection with the  
22 review of relevant documents for the installation, maintenance,  
23 inspection, repair, replacement or removal of devices, structures, mate-  
24 rials or equipment on the adjoining property;

25 (c) approve, and obligate the adjoining owner to accept such documents  
26 for the installation, maintenance, inspection, repair, replacement or  
27 removal of devices, structures, materials or equipment on the adjoining  
28 property as the licensee may present during the proceeding;

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

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

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

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

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

44 § 3. This act shall take effect immediately.