STATE OF NEW YORK

357--B

2025-2026 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 8, 2025

Introduced by M. of A. RAJKUMAR, JACKSON, ZACCARO, LEVENBERG -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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: (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;

(d) the term "refuse", "refusal", or "refused" shall be deemed to include instances where more than one written notice has been served, by certified mail, on the owner and has not been responded to within sixty days;

(e) the term "state entity" shall refer to the metropolitan transportation authority, or its affiliate or subsidiary agencies.

2. When [~~an owner or lessee~~] a licensee seeks to make improvements or repairs to real property so situated that such improvements or repairs

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

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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~~]**, other than a state entity**, 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 affidavits, if any, shall state the facts making such entry necessary and the date or dates on 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 may include:

(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) where required by code, regulation or local law, any necessary foundation or building supports, including, 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, 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 at the licensee's sole option 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 duration of the license based on 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 and if unable to do so make a request to the court for an extension of such license;

(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 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 the 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 loss of use and enjoyment of the adjoining premises including diminution in value.

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 licensee to reimburse the adjoining owner for reasonable 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; and

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

6. Notwithstanding subdivision five of this section, where the adjoining property to which the licensee seeks access is owned, leased or otherwise occupied by a state entity, the court shall not grant a license.

§ 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.