

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:

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;

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

17 (e) the term "state entity" shall refer to the metropolitan transpor-
18 tation authority, or its affiliate or subsidiary agencies.

19 2. When [~~an owner or lessee~~] a licensee seeks to make improvements or
20 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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1 cannot be made by the [~~owner or lessee~~] licensee in a commercially
2 reasonable manner without entering the premises of an adjoining owner
3 [~~or his lessee~~], other than a state entity, and permission so to enter
4 has been refused, the [~~owner or lessee seeking to make such improvements~~
5 ~~or repairs~~] licensee may commence a special proceeding for a license so
6 to enter pursuant to article four of the civil practice law and rules.
7 The petition and affidavits, if any, shall state the facts making such
8 entry necessary and the date or dates on which entry is sought. Any
9 adjoining owner named as a party in such proceeding shall, at the
10 request of the licensee, provide such licensee with such information as
11 shall allow the licensee to identify the lessees of the adjoining owner
12 and join them in the proceeding. Such license shall be granted by the
13 court in an appropriate case and upon such other terms as justice
14 requires. The licensee shall be liable to the adjoining owner [~~or his~~
15 ~~lessee~~] for actual damages occurring as a result of the entry.

16 3. The purposes for which a licensee may seek permission to enter an
17 adjoining property pursuant to this section may include:

18 (a) Preconstruction survey to document the existing conditions of the
19 adjoining property;

20 (b) The installation, maintenance, inspection, repair, replacement
21 and/or removal of: (i) vibration, crack or optical monitoring devices on
22 or within any existing improvements on the adjoining property; (ii)
23 sheds, bridges, netting or other protective covering over the roof,
24 facades, windows, skylights, mechanical equipment, chimneys or other
25 exterior portions of buildings or yards, walkways, driveways or other
26 open areas on the adjoining property; (iii) scaffolding on or over the
27 adjoining property; (iv) sheeting, shoring, bracing or other retaining
28 structures needed for demolition, support or excavation; (v) where
29 required by code, regulation or local law, any necessary foundation or
30 building supports, including, wall ties, tie-backs, anchors, straps and
31 underpinning, for any demolition, new or existing improvements on the
32 premises of the licensee or adjoining owner, including, party walls; or
33 (vi) flashing, sealing or other materials or equipment needed to estab-
34 lish the weather-proof integrity of any wall, foundation or other exte-
35 rior portion of a building on the adjoining property;

36 (c) Temporary projections or intrusions into the airspace of the
37 adjoining property as necessary to complete the proposed improvements or
38 repairs;

39 (d) Temporary or at the licensee's sole option permanent relocation,
40 extension or offsetting of any chimneys, vents, flues, exhausts or other
41 rooftop equipment on the adjoining property, as required by applicable
42 law;

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

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

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

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

53 (b) The duration of the license based on a good faith projection of
54 the dates and estimated duration of any entry to the adjoining property.
55 The licensee shall thereafter make commercially reasonable efforts to

1 adhere to such dates and durations and if unable to do so make a request
2 to the court for an extension of such license;

3 (c) Where permission includes a right to install, maintain, inspect,
4 repair, replace or remove any devices, structures, materials or equip-
5 ment on the adjoining property, the grantee licensee shall provide to
6 the adjoining owner, as applicable, copies of any relevant documents
7 prior to commencement of such work;

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

16 (e) The licensee shall be required to reasonably compensate the
17 adjoining owner for the loss of use and enjoyment of the adjoining prem-
18 ises including diminution in value.

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

21 (a) consider evidence that either party failed to comply with the
22 terms of any existing or previously existing license respecting the same
23 property;

24 (b) obligate the licensee to reimburse the adjoining owner for reason-
25 able fees incurred in connection with the review of relevant documents
26 for the installation, maintenance, inspection, repair, replacement or
27 removal of devices, structures, materials or equipment on the adjoining
28 property; and

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

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

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

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

42 § 3. This act shall take effect immediately.