

STATE OF NEW YORK

3799--B

Cal. No. 350

2025-2026 Regular Sessions

IN SENATE

January 30, 2025

Introduced by Sens. COMRIE, HOYLMAN-SIGAL, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

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 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 (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
21 cannot be made by the [~~owner or lessee~~] licensee in a commercially
22 reasonable manner without entering the premises of an adjoining owner

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

LBD00711-04-5

1 ~~[or his lessee]~~, other than a state entity, and permission so to enter
2 has been refused, the ~~[owner or lessee seeking to make such improvements~~
3 ~~or repairs]~~ licensee may commence a special proceeding for a license so
4 to enter pursuant to article four of the civil practice law and rules.
5 The petition and affidavits, if any, shall state the facts ~~[making such~~
6 ~~entry necessary and the date or dates on which entry is sought]~~ support-
7 ing the entry and the date or dates upon which entry is sought. Any
8 adjoining owner named as a party in such proceeding shall, at the
9 request of the licensee, provide such licensee with such information as
10 shall allow the licensee to identify the lessees of the adjoining owner
11 and join them in the proceeding. Such license shall be granted by the
12 court in an appropriate case and upon such other terms as justice
13 requires. The licensee shall be liable to the adjoining owner ~~[or his~~
14 ~~lessee]~~ for actual damages occurring as a result of the entry.

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

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) foundation
29 or building supports, including, without limitation, wall ties, tie-
30 backs, anchors, straps and underpinning, for any demolition, new or
31 existing improvements on the premises of the licensee or adjoining
32 owner, including, without limitation, party walls; or (vi) flashing,
33 sealing or other materials or equipment needed to establish the weath-
34 er-proof integrity of any wall, foundation or other exterior portion of
35 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 permanent relocation, extension or offsetting of any
40 chimneys, vents, flues, exhausts or other rooftop equipment on the
41 adjoining property, as required by applicable law;

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

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

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

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

52 (b) The licensee shall provide to the adjoining owner, as applicable
53 and as reasonably practicable but no later than the delivery date of the
54 applicable notice required pursuant to paragraph (a) of this subdivi-
55 sion, a good faith projection of the dates and estimated duration of any
56 entry to the adjoining property. The licensee shall thereafter make

1 commercially reasonable efforts to adhere to such dates and durations or
2 provide timely notification of changes thereto;

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 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 use and occupancy of the adjoining premises.

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

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

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

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

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

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

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

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

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

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

52 § 3. This act shall take effect immediately.