

Balancing Development and Property Rights: The Impact of the Amendments to RPAPL Section 881

By Peter S. Borock, Nick Hockens and Tatiana Codner

June 15, 2026

In New York City, real estate owners undertaking demolition, construction or alteration work must protect adjoining properties, often by accessing them to erect scaffolding, install sidewalk sheds, monitor vibration or structural movement, and implement other protective measures. At the same time, a fundamental aspect of property ownership is the owner's right to exclude others. These realities create inherent tension when an owner seeks access to adjoining property to implement required protection, but the neighbor does not permit access.

In 1968, the New York State Legislature enacted Section 881 of the Real Property Actions and Proceedings Law (RPAPL §881) to address this tension. RPAPL §881 allows property owners to commence a special proceeding seeking a court-ordered license for temporary access to adjoining property when the adjoining owner refuses to grant such access. While the statute provided a



Credit: supattra suparit/Adobe Stock

Real estate companies

judicial mechanism to resolve these disputes, the statute was brief and vague, offering little guidance on the process for requesting access, the scope and duration of licenses, and compensation owed to adjoining owners.

Effective Dec. 5, 2025, the statute was amended (the 2025 Amendment) to expand its scope and specificity. Real estate owners and developers should understand the changes introduced by the 2025 Amendment, its practical implications for negotiations, how it reshapes developer-neighbor

dynamics, and unresolved questions courts may address over time.

The Pre-Amendment Landscape

Before the 2025 Amendment, negotiations between adjoining owners concerning construction license agreements were often driven by leverage and gamesmanship. Adjoining owners could delay responses to access requests or withhold consent, forcing developers to seek judicial relief and exposing them to procedural challenges, such as motions to dismiss, arguing that access had not been adequately requested or actually refused.

Adjoining owners could also use proceedings to demand significant compensation, and when multiple adjacent owners were involved, holdout behavior could cause major project delays and increased pressure to settle for excessive amounts.

This holdout dynamic was especially problematic in disputes involving excavations requiring underpinning, tie-backs, or similar work. Some courts interpreted underpinning as a permanent encroachment rather than temporary access, creating uncertainty for developers who could be compelled to pay significant sums to obtain access necessary for excavation. In sum, many projects faced cost increases and delays while negotiations over required access licenses proceeded or stalled.

Key Changes Introduced by the 2025 Amendment

The New York State Legislature attempted to address these issues by amending RPAPL §881 to clarify the purposes for which access may be sought, the process for requesting access, what constitutes refusal,

the duration of access, and compensation due to licensors.

While RPAPL §881 had referred generally to accessing adjoining property for “improvements or repairs,” the 2025 Amendment lists specific purposes, including pre-construction surveys, installation or removal of monitoring devices, protective coverings or scaffolding, and necessary foundation or building supports, including underpinning and tie-backs.

The 2025 Amendment also standardizes the pre-litigation phase for access license negotiations. An adjoining owner is now deemed to have refused access when a property owner serves more than one written notice by certified mail and the adjoining owner does not respond within 60 days. The amendment also provides guidance on access terms. The developing owner, or licensee, must provide a “good faith projection” of the necessary duration and make “commercially reasonable efforts” to adhere to that timeline or seek an extension from the court.

The licensee must also provide the adjoining owner—the licensor—with documentation confirming that all parties accessing the property carry commercial general liability insurance benefiting the adjoining owner if damage occurs. Finally, the licensee must reimburse the adjoining owner for fees incurred in reviewing relevant documents and “reasonably compensate” the licensor for loss of use and enjoyment, including diminution in value.

We note, however, that the 2025 Amendment also makes clear that RPAPL §881 does not apply to properties owned, leased or occupied by state entities. Accordingly, developers

working adjacent to such properties do not have access to the streamlined framework the amendment provides.

Implications for Licensees and Licensors

The shift from a vague framework to a more structured process benefits both licensees and licensors. For licensees, the 2025 Amendment provides greater predictability as to the availability and scope of access in various contexts. The explicit recognition that underpinning warrants temporary access, for example, allows developers to proceed with greater confidence that necessary permissions will be granted and reduces the risk of cost increases or delays for time-sensitive work.

The amendment also establishes a clearer procedural path for resolving access disputes. Developers now know they must provide written notice to adjoining owners and that failure to respond within sixty days permits commencement of a court proceeding, enabling better construction planning and a stronger basis for countering motions to dismiss based on technical challenges. With procedures more clearly defined, compensation negotiations are less likely to be driven solely by leverage or time pressure.

For licensors, the statute now provides enhanced procedural and substantive protections previously left to negotiation or judicial discretion. Licensors must receive formal written notice and be afforded a defined timeframe to respond, reducing the risk of being drawn into court without adequate time to consider the request or review supporting information.

They are also entitled to receive—and be reimbursed for reviewing—documentation

related to the work to be performed on their property. Although codifying reasonable compensation for loss of use and enjoyment and diminution in value does not eliminate the inconvenience of sidewalk sheds, construction debris, noise, or other restrictions, licensors can be assured they will not be required to accommodate such work without compensation.

Impact on Developer-Neighbor Dynamics

The 2025 Amendment is reshaping the dynamics between developers and neighbors in several key respects. Disputes will shift from the threshold question of whether access is warranted to the more nuanced questions of whether the proposed duration, scope, and compensation are reasonable. Both parties will also be incentivized to engage in more formal communications, and document requests, responses, and statutory compliance in anticipation of potential litigation.

Notably, when granting licenses or resolving disputes under the amended statute, courts can now evaluate whether either party has failed to comply with the terms of prior or existing licenses related to the same property. This provision was recently applied by the Kings County Supreme Court in a Feb. 6, 2026 decision. *Huggins v. Villegas*, 248 N.Y.S.3d 855 (N.Y. Sup. Ct. 2026).

There, a property owner sought access to a neighbor's backyard to perform building repairs. Following a Nov. 13, 2025 hearing, the court granted the licensee access to its neighbor's backyard from Dec. 1–5, 2025, between 8:00 a.m. and 4:00 p.m., conditioned on a \$100.00 payment per day for access and compliance with safety and notice requirements. When

the contractor attempted to perform the work, the neighbor prevented access by calling the police and bringing her dogs outside.

The licensee brought a civil contempt action, and while the court found one element of civil contempt unmet, it determined that the neighbor was noncompliant based on RPAPL §881(5). The court granted significant relief by extending the deadline for repairs, lifting the daily payment requirement, and enjoining the adjoining owner from interfering. Beyond this example, it remains to be seen how this mechanism will incentivize compliance with access license terms, as noncompliance could result in less favorable terms in future proceedings.

Unresolved Questions

Despite the increased clarity the 2025 Amendment brings, questions remain as to how this new framework will be applied in practice and developed through case law.

For example, although the 2025 Amendment establishes a more predictable path for commencing a proceeding, it does not dictate timing once one is initiated. It remains to be seen whether the amendment will lead to faster resolutions or whether existing court timelines will continue to cause delays. At the same time, the 2025 Amendment may incentivize parties to reach agreements outside court to avoid litigation costs.

Similarly, although the 2025 Amendment reduces some opportunities for holdout behavior, it is unlikely to eliminate them entirely. Adjoining owners may continue to use the realities of construction—such as disruption, loss of enjoyment, and other inherent interferences—to negotiate favorable terms.

Procedural ambiguities also remain. The statute provides that an adjoining owner's failure to respond within sixty days after more than one written notice constitutes a refusal, but it does not explicitly address whether the sixty-day period runs from the first or final notice or the required timing or spacing between notices. These uncertainties may give rise to further disputes.

Conclusion

As courts address these issues, they will play a critical role in refining RPAPL §881 as amended. In the interim, the 2025 Amendment represents a meaningful shift towards a more structured, pro-development framework while preserving the rights of adjoining owners. As rents continue to set records and the availability of housing stock remains tight, these questions will take on increasing importance.

Peter S. Borock and Nick Hockens are shareholders at Greenberg Traurig. **Tatiana Codner** is an associate with the firm.