P&A ALERT
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Amended Again?! Critical Changes to RPAPL § 881: What New York Contractors and Construction Managers Need to Know

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Recent amendments to New York's RPAPL § 881 will significantly change how project teams obtain and maintain access to adjoining properties for construction-related work. The 2025 amendment signed into law by Governor Hochul, and the newly enacted 2026 revisions, will directly impact general contractors (GCs) and construction managers (CMs), as well as their trade contractors who regularly confront neighbor access, support of excavation, and protection of adjoining property challenges. Although we do not advise that GCs and CMs get involved in the "weeds" of license agreements or the prosecution of an action to obtain access pursuant to an RPAPL § 881 action, which are typically owner responsibilities, GCs and CMs should understand the change in law, as there may be circumstances where they are responsible for securing access.

This alert outlines the key statutory changes and explains the operational, scheduling, insurance, and risk management implications for the New York construction industry.

1. Understanding RPAPL § 881

RPAPL § 881, a newly revised section of the Real Property Actions and Procedures Law, provides a mechanism for obtaining court ordered access to neighboring property when such access is required for construction or protection of work when permission to enter the neighboring property is refused. Aside from creating a right for owners to obtain a license for access, the previous statute did not provide any specific details on the conditions for access, other than "upon such terms as justice requires." This vagueness impacted negotiations to attempt to secure a license peacefully without resorting to the prosecution of an action – generally to the benefit of the adjacent property owner. The new § 881 attempts to address this problem. Now those conditions that have historically been imposed by courts, including indemnity, restoration of damage, license fees, and professional fees, have been expanded upon and codified as part of the revised statute.

2. The 2025 Amendments — What GCs and CMs Must Prepare For

A. Permanent Encroachments Now Court-Authorized

The revised statute allows courts to authorize permanent structural elements on a neighbor's property—such as underpinning, tiebacks, anchors, and straps. Under the previous statute, work such as underpinning could be performed only with the acquiescence of an adjacent property owner.

B. New "Silence = Refusal" Trigger

A neighbor's failure to respond within 60 days to a written notice served by certified mail now constitutes a refusal, enabling the filing of an 881 petition.

C. Lower "Commercially Reasonable" Standard

Petitioners no longer must prove absolute necessity—only that access is required to perform the work in a commercially reasonable manner.

D. Expanded List of Statutorily Covered Activities

The statute now formally covers:

- protective netting, sheds, and coverings;
- façade and roof protections;
- scaffolding and platforms;
- shoring, bracing, or other retaining structures needed for demolition or support or excavation (SOE);
- monitoring devices;
- rooftop equipment modifications;
- temporary airspace intrusions;
- flashing, sealing or other materials needed to establish waterproofing of any wall, foundation or other exterior portion of a building;
- staging and construction logistics.

E. New Document-Production Duties

Owners and Developers—and practically speaking, GCs/CMs—must provide adjoining owners with:

- plans and specifications;
- surveys;
- schedules; and
- engineering reports.

F. Tenant Identification Requirement

Adjoining owners must disclose tenants so they can be joined in the proceedings.

G. State Entity Exemption

The statute prohibits court ordered access to property owned or controlled by any state entity, such as the MTA. Notably, the 2025 amendment defined the term "state entity" as "the Metropolitan Transportation Authority, or its affiliate or subsidiary agencies." However, the February 13, 2026, amendment replaces that narrow definition with a broad one that now covers any department/division/agency/office/public authority/public benefit corporation of New York State, or any affiliate or subsidiary agencies thereof.

H. Conditions for Permission

The statute now specifically identifies that permission can be conditioned on, among a few other factors, the maintenance of general liability insurance in amounts that are commercially reasonable for the entry, reasonable compensation to the adjacent owner for the access, and reimbursement for reasonable, professional fees incurred for the review of the documents for such work to be performed.

3. What It Means for Your Projects

These amendments provide greater predictability. However, the access-trigger mechanisms will require early project-team alignment.

Contractors should understand that their project planning and coordination will change. For example, because underpinning is no longer subject solely to negotiated consent and could be granted by a court, the contractor's means and methods decisions must assume potential judicial approval and may need to be detailed in writing.

Additionally, contractors should discuss with their owners starting the notice process earlier, typically as soon as they identify the SOE, scaffold, or protection needs. The notice process should be built into the preconstruction schedule, and contractors should require the project owners to issue formal notices to trigger the statutory clock. Also, because the new document production requirements are statutory, contractors should add compensable delay protection in their contracts to account for any late design information or slow owner responses. Further, because more project work now clearly falls within § 881 authority, contract scopes and protection plans must reflect these expanded obligations. Finally, because of the exemption for state entities, like the MTA, projects adjoining transit infrastructure remain at high risk for delay, so an early negotiation strategy is essential. Contractors should not assume judicial assistance will be available.

The upshot is that access petitions should be easier to obtain. However, contractors should be mindful that courts will scrutinize the engineering rationale, so it is critical to ensure the design documentation supports the SOE plan. Contractors should be prepared to justify chosen means/methods as "commercially reasonable." The new tenant identification requirement should result in fewer post order disputes with occupants because it also creates clearer coordination lines for vibration, noise, and access protections.

4. Insurance

Another significant change is to the statute's insurance provisions. As enacted in December 2025, subdivision 4(d) required the licensee/contractors to maintain CGL insurance and name the adjoining owner and lessees (as applicable/made known) as additional insureds in commercially reasonable amounts. However, under the 2026 amendment, instead of mandating additional insured status, the licensee must provide the adjoining owner and its lessee(s) with relevant documents confirming the required CGL coverage is maintained—provided those documents are sufficient to allow the adjoining owner/lessees to make a third party claim under that insurance if damage occurs.

5. Takeaways for GCs and CMs

- Treat RPAPL § 881 notices as early schedule milestones;
- Update contract templates to address document production, protection work, and neighbor-access delays;
- Coordinate closely with engineers to support the "commercially reasonable" standard;
- Review insurance workflows to prepare for revised documentation requirements;
- Identify state-owned neighboring properties during early due diligence;
- Align subcontract scopes with the statute's expanded coverage of protection and monitoring activities.