

# Construction Access Disputes and RPAPL § 881 Representation



*Published January 27, 2025. Revised May 28, 2026*

*Mark J. Caruso Esq, Partner at Abrams Fensterman LLP*

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## What Is RPAPL § 881 in New York?

RPAPL § 881 is a New York Real Property Actions and Proceedings Law section that lets a property owner petition a court for a temporary license to enter an adjoining neighbor's property when access is required to install protections, perform inspections, or complete work safely in compliance with Department of Buildings. When access cannot be obtained by agreement, RPAPL 881 provides a statutory mechanism for securing a license through the courts. Abrams Fensterman attorneys represent both petitioners and adjacent property owners in Long Island, New York City, and upstate New York.

Common triggers include sidewalk sheds extending onto a neighbor's frontage, overhead protection over an adjacent roof, underpinning at a shared lot line, scaffold tiebacks anchored into a party wall, and crane swing clearances. If the adjoining owner signs a voluntary license, no court involvement is needed and the parties simply negotiate terms. If voluntary access fails, the petitioner files an RPAPL § 881 special proceeding in the New York County Supreme Court (or the supreme court of the county where the property sits) to obtain a court-ordered license, a process the firm's [New York real estate law practice](#) handles in coordination with related litigation, financing, and transactional work.

## When Is a Neighbor License Agreement Required for Construction?

A neighbor license agreement is required whenever construction work cannot be performed safely or in compliance with Department of Buildings requirements without entering or installing protections on an adjoining property. Common triggers include sidewalk sheds extending onto a neighbor's frontage, overhead protection over an adjacent roof, underpinning at a shared lot line, scaffold tiebacks anchored into a party wall, and crane swing clearances.

If the adjoining owner signs a voluntary license, no court involvement is needed and the parties simply negotiate terms. If voluntary access fails, the petitioner files an RPAPL § 881 special proceeding in the New York County Supreme Court (or the supreme court of the county where the property sits) to obtain a court-ordered license.

# What Factors Do the Courts Weigh in an RPAPL 881 Petition?

New York courts apply a balancing test focused on the equities between the petitioner and the adjacent property owner. The factors most consistently considered are:

1. **Nature, extent, and duration** of the proposed work and the access required.
2. **Necessity of the access**, including whether the work can reasonably be completed without entering the neighbor's property.
3. **Protections to the adjacent property**, including overhead protection, monitoring, and pre-construction surveys.
4. **Inconvenience and disruption** to the adjacent owner's use, light, air, or quiet enjoyment.
5. **Good faith negotiation** by the petitioner before filing, including reasonable offers of terms and license fees.
6. **License fees and compensation** for the use and burden imposed on the neighbor's property.
7. **Insurance and indemnification** offered, including additional-insured status and adequate policy limits.
8. **Reimbursement of professional fees** the neighbor reasonably incurred in reviewing and negotiating the license.

Courts retain wide discretion to tailor relief and can impose conditions absent from the petitioner's proposed terms.

# What Terms Are Included in a Neighbor License Agreement?

A negotiated or court-ordered neighbor license agreement typically addresses:

- **Scope of access**, including the specific areas, structures, and air rights involved.
- **Duration**, with start and end dates tied to construction milestones and an extension mechanism.
- **Protective work**, including overhead protection, netting, monitoring devices, vibration monitoring, and pre-construction surveys.
- **Insurance**, including commercial general liability with the neighbor named as additional insured, plus appropriate umbrella, workers' compensation, and builders risk coverage.
- **Indemnification**, allocating risk for property damage, personal injury, and third-party claims arising from the access.
- **License fees and recurring use payments**, often structured monthly for as long as the protections remain in place.
- **Professional fee reimbursement**, covering the neighbor's reasonable legal and engineering review costs.
- **Restoration obligations** following completion of the work.

Terms are negotiated against the leverage of an available 881 proceeding, so weak protective offerings invite court intervention.

## How Long Does an RPAPL 881 Proceeding Take?

Timing depends on the court, the complexity of the work, and whether the adjacent owner contests the petition. A straightforward, well-documented petition with limited opposition can resolve within roughly 60 to 120 days from filing. Contested matters involving engineering disputes, license-fee disagreements, or extensive protective work can run six months or longer. Because access issues directly affect construction schedules, financing draws, and carrying costs, Abrams Fensterman pursues these proceedings on an expedited posture wherever possible.

## What Rights Does an Adjacent Property Owner Have Under RPAPL 881?

An adjacent property owner asked to grant construction access retains substantive rights even after a petition is filed. The owner can require adequate protective work, insurance naming the owner as additional insured, indemnification, license fees commensurate with the burden, reimbursement of professional fees, and conditions on duration and scope. The owner can also object to overreach and propose alternative protections. The statute is not a one-way grant to developers; courts routinely impose terms favorable to a well-represented adjacent owner.

## How Abrams Fensterman Represents Both Sides

The firm regularly represents both petitioners (developers and owners seeking access) and respondents (adjacent owners asked to grant access). This dual posture gives the team a working knowledge of what courts accept, what license-fee ranges hold up under scrutiny, and what protective terms survive judicial review. Practice leaders **Mark J. Caruso**, **Rachelle Rosenberg**, and **Elliot Steinmetz**, together with partners **Leonard Gekhman** and associates **Efraim S. Lipschutz** and **Agnes Poplawski**, handle RPAPL 881 matters from the firm's Brooklyn Metrotech, Long Island, White Plains, Rochester, and Albany offices. The team coordinates with engineers, architects, and construction professionals so that license terms and court submissions reflect the technical realities of the project.

## Contact Our RPAPL 881 and Neighbor License Agreements Team

To discuss a neighbor license agreement or an RPAPL § 881 proceeding, contact the firm on Long Island at 516-328-2300, in Brooklyn at 718-215-5300, in White Plains at 914-607-7010, in Rochester at 585-218-9999, or in Albany at 518-535-9477.

## Frequently Asked Questions

**Can I sue my neighbor for construction access in New York?** You cannot sue for damages simply because a neighbor refuses voluntary access, but you can file a special proceeding under RPAPL § 881

asking the court to grant a temporary license on terms it considers just. The proceeding is filed in the supreme court of the county where the property is located.

**What happens if my neighbor refuses construction access?** If voluntary negotiation fails, the petitioner can file an RPAPL § 881 petition. The court then weighs the equities, including necessity, protections offered, license fees, and good-faith negotiation, and issues a license with conditions, or denies the petition if the request is unreasonable.

**How is a license fee calculated in an RPAPL 881 case?** License fees reflect the burden the access places on the adjacent owner. Courts consider the duration of the access, the loss of use of affected areas (rooftops, terraces, yards, frontage), the impact on the owner's enjoyment of the property, and comparable fees awarded in similar matters. Fees are often structured as monthly payments while protections remain in place.

**Do I need an RPAPL 881 order to install a sidewalk shed?** A sidewalk shed extending onto a neighbor's frontage or roof requires the neighbor's permission. If consent is given voluntarily, the parties sign a license agreement. If consent is refused, an RPAPL § 881 petition is the statutory path to obtain a court-ordered license for the installation period.

**What insurance is required for a neighbor license agreement?** A neighbor license typically requires commercial general liability insurance naming the adjacent owner as an additional insured, umbrella coverage, workers' compensation, and, where the work warrants it, builders risk coverage. Policy limits scale with project scope; courts review insurance adequacy as part of the balancing analysis.

## Contact Our RPAPL 881 & Neighbor License Agreements Team

To learn more about how we can assist with your project or protect your property interests, please [contact our law firm](#) on Long Island at [516-328-2300](tel:516-328-2300), in Brooklyn at [718-215-5300](tel:718-215-5300), White Plains at [914-607-7010](tel:914-607-7010), Rochester at [585-218-9999](tel:585-218-9999) or Albany at [518-535-9477](tel:518-535-9477) to schedule an initial consultation.