



AT Academy: Co-op and Condo Virtual Law Series: Access License Agreements

SEPTEMBER 22, 2022

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Initial Considerations

- **When you need access to a neighbor's building:**
 - Get clear scope of what is required and when
 - Speak to engineer and contractor
 - Contact neighbors early
 - Include in contract with contractor
 - Have your attorney prepare an access agreement
 - What to offer initially/should we pay a license fee
 - If all else fails, commence 881 proceeding
 - Reciprocal Agreements

Initial Considerations

- **When a neighbor needs access to your building:**
 - Immediately contact your attorney. Neighbor should pay your legal and architect/engineer fees.
 - Make four requests:
 1. Copy of work plans to neighbor building and written narrative of work;
 2. Copy of protection plans and written narrative of protection plans;
 3. Copy of work schedule; and
 4. Written acknowledgement that neighbor will pay all professional fees (consider requiring an escrow to be applied toward these fees).
 - Once you receive all of the above:
 - Have your architect/engineer review plans and confirm the protections and timelines are satisfactory or recommend changes.
 - Have your attorney prepare an access agreement and submit to neighbor.
 - Should we ask for a license fee?
 - Reciprocal agreements

Important Provisions in License Agreements

- **Pre-Construction/Post-Construction Surveys** – document everything.
- **Types of Protections**
 - Sidewalk bridging
 - Controlled Access Zone (CAZ)
 - Scaffolding and Roof Protections
- **Insurance** – must provide adequate insurance to protect neighbor from claims for property damage or injuries.
 - How much coverage?
 - What types of coverage?
 - Name additional Insureds (co-op/condo, directors, officers, employees, unit owners/shareholders, managing agent, architect, engineer).
- **Indemnification** – hold harmless for additional insureds. Indemnify neighboring owner against claims of injury or property damage arising out of the work.
- **Project Duration**

Important Provisions in License Agreements

- **License fees vary widely. Considerations include:**
 - Voluntary (new constructions) or mandatory (FISP)
 - Duration – escalations
 - Impact on property
 - common area or private terrace
 - type of protections
 - duration
 - season
 - Monthly? Lump sum?
- **Liquidated Damages** – amount of damages owed if there is a delay in completion of the work
- **Security Provision / Escrow**
- **Reciprocal Provisions**

Important Provisions in License Agreements

- **Professional Fee Reimbursement** – Neighbor requesting access (Licensor) typically reimburses legal and engineering fees of neighbor (Licensee)
- **Repairs** – damage should be identified ASAP
 - Compare post-construction survey with pre-construction survey
- **Quality of Life**
 - Window cleaning
 - Extermination
- **Developer-Specific Provisions**
 - Underpinning – permanent encroachment
 - Vibration/crack monitors

Litigating

- Try not to – no matter which side of the aisle you are on
- Statute
 - RPAPL 881
 - When an owner or lessee seeks to make improvements or repairs to real property so situated that such improvements or repairs cannot be made by the owner or lessee without entering the premises of an adjoining owner or his lessee, and permission so to enter has been refused, the owner or lessee seeking to make such improvements or repairs may commence a special proceeding for a license so to enter pursuant to article four of the civil practice law and rules. The petition and affidavits, if any, shall state the facts making such entry necessary and the date or dates on which entry is sought. Such license shall be granted by the court in an appropriate case upon such terms as justice requires. The licensee shall be liable to the adjoining owner or his lessee for actual damages occurring as a result of the entry.

Litigating

- **What to include in a petition**
 - Relief to be requested
- **What to include in an answer**
 - Specific requests
- **Is there a difference between a request for access for legally mandated work vs. voluntary work?**
- **Hearing vs. “on papers”**
- **Experts**
 - Construction professionals
 - Appraisers

Litigating

- Professional fees
- “A property owner compelled to grant a license should not be put in a position of either having to incur the costs of a design professional to ensure petitioner’s work will not endanger his property or having to grant access without being able to conduct a meaningful review of petitioner’s plans”
- With that in mind:
 - Will the court award professional fees, including legal fees, to the adjoining property owner?

Litigating

- License fees
- “Where the granted license will entail substantial interference with the use and enjoyment of the neighboring property during the license period, thus decreasing the value of the property during that time,” license fees are warranted
- With that in mind:
 - Will the courts award a license fee to the adjoining property owner?



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