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Construction Law: The building next door: Establishing good relations between neighbors

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The best sign that the markets are back on track? A good old backhoe.

To be sure, as equity loosens and investors regain their faith and footing, construction is picking up in neighborhoods throughout New York City—from developments in Midtown East and the South Street Seaport in Manhattan, to transitioning neighborhoods throughout Brooklyn such as Williamsburg, DUMBO and Fort Greene.

Everyone can agree that community renewal and rising property values is a win-win - it's good for the developer and it's good for the neighborhood. But developments come with complex issues that must be worked through between the builder and adjacent neighbors.

One key to the construction proceeding smoothly is establishing good relations between

neighbors” here, the builder and adjoining homeowner” which can save all participants a great deal of the unnecessary tension that can develop between them during construction. Litigation is always best avoided if possible, and many of the issues that can lead to conflict can be easily resolved and, in fact, avoided altogether.

It is critical for builders and neighbors to keep the lines of communication open and to understand and respect each other's rights and needs. This is particularly important where the developer needs access to the adjacent owner's property, as is increasingly the case during the construction process. It is of great benefit” to both the builder and the adjacent homeowner” to work through a license agreement that addresses both the developer's right to develop and the neighbor's right to the use and enjoyment of his or her home. If the parties are unable to work this through cooperatively, the matter will end up in Court, which, again, is problematic for all involved. Because there are few cases that fully address the common concerns of developers and homeowners, decisions in matters that proceed to Court are subject to the broad discretion of the Judge” which can often leave both parties disappointed.

Through our extensive work in this area, we have found that the following 10 considerations are of utmost importance in reaching an agreement that is reasonable and fair to both sides:

1. The full scope of the access work must be defined (drawings and documentation detailing the work are a must). The license agreement should attach the plans for the access work. Any significant changes required to these plans during the construction should be discussed with the adjacent property owner's consultant and subject to prior approval, which the homeowner should agree not to unreasonably withhold or delay.
2. A reasonable schedule or time frame for the access work should be set and a discussion should be held on what happens if the schedule is exceeded.
3. A pre-construction survey of the adjacent home (exterior and interior) should be conducted. This should be shared with the homeowner, with photos, before construction begins and the homeowner should be given an opportunity to review and respond to it.
4. The adjacent homeowner's property should be cleaned, protected and monitored during the access work. Depending on the access work, vibration monitoring and survey points are a must.
5. It is in everyone's best interest for the developer to provide insurance covering the adjacent homeowners as additional insureds” by policy endorsements” consistent with the DOB's requirements for such insurance.
6. It is reasonable for the parties to agree on what will happen in the event of damage to the

adjoining property or if the homeowner has to vacate his or her home and the process for repairs or reimbursement of the associated expenses.

7. The parties should address whether there will be a license fee for the access work. This is typically contingent on what the access work is and the effect it may have on the adjacent homeowner.

8. The license agreement should be clear on whether the adjacent homeowner's reasonable legal and consultant's fees arising from the license will be covered by the homeowner or developer.

9. The agreement should also clearly spell out the specifics of to what extent property affected by the access work will be restored to its pre-construction condition at the conclusion of construction.

10. Last, it is absolutely critical for the parties to come to a clear understanding on a process for the resolution of any claims or disputes between them (starting, of course, with direct communications and an open dialogue).

As we've seen over and over, it is in all participants' best interests to invest in smart agreements from the get-go that clearly set forth each party's rights and responsibilities. If the end game is community renewal and rising property values for all, that's an investment worth making for all involved.

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