



## New Court Ruling a Boon to Co-op and Condo Boards

By Ron Egatz

**W**ith new construction booming and Local Law 11 façade repairs coming due every five years, most co-op and condo boards have become aware of the need for iron-clad access agreements. These negotiated agreements provide protection for boards when repair workers at a neighboring building or the developer of an adjacent lot need access to their building.

Boards faced with such situations just got some very good news.

For the first time, the Appellate Division of the state Supreme Court, First Judicial Department, has ruled that a license fee can be proper and appropriate for buildings that are inconvenienced by neighboring repairs or construction. Even more important, the appeals court also ruled that a developer seeking access from his neighbor may have to pay the neighbor's attorneys' fees. The ruling, available here, is a clear win-win for co-op and condo boards.

"This is the first time in New York state that an appeals court has weighed in and blessed the propriety of awarding attorneys' fees, because some of the lower courts had previously disagreed," says attorney Dani Schwartz at Rosenberg & Estis.

The appeals court ruling stems from Section 881 of the 1968 Real Property Actions and Proceedings Law, which established that if a building owner refuses to grant temporary access to repair or construction crews at a neighboring property, a court order can be issued to force the owner to grant access. Hence the importance of boards proactively negotiating access



agreements - especially during the current construction frenzy.

"For a long time, cases under this statute were few and far between," Schwartz says. "But in the last 10 years - with the huge development boom - we're seeing more and more of them. Whether it's the co-op that may need access to a neighbor's property to do a roof deck, or the condo whose neighbor is seeking to compel it to provide access, these issues are becoming almost unavoidable. For co-ops and condos who haven't encountered this issue, more likely than not, they will."

And when they do, circling the wagons is not an option. Negotiating a favorable access agreement, legal experts say, is preferable to fighting

against a neighbor or developer and having the courts order access to the building. Now, with a license fee and attorneys' fees paid for by the neighboring building or the developer, co-op boards have even greater impetus to negotiate in good faith.

"It's critical for boards to know the alternative to reaching an agreement, because this ruling sets the table for what kind of negotiated deal is reasonable," says Schwartz. "It's a balancing act because you don't want to discourage new development, but you also want to make sure the rules being laid down are fair to the property owners who are being intruded upon. I expect this [appeals court] ruling will stand for the foreseeable future." ■