

## Construction Next Door: Three Easy Steps To Plan For Success

By Raymond T. Mellon and Timothy F. Hegarty, Zetlin & De Chiara LLP



In New York City, new construction, exterior remediation and/or preservation and substantial rehabilitation construction projects are an everyday occurrence, and the impact of this construction is just as commonplace. Consequently, it is wise to put in place a proper plan to ensure that adjacent building structures are protected from any short or long-term construction impacts. This is more than a good neighbor policy; it is a prudent management strategy for the project and is designed to prevent NYC Department of Building complaints and possible violations for your projects that can create delays and possible cost overruns.

While it may seem plausible for building owners to have a plan in place for coordinating with their neighbors before beginning construction, many owners operate under the impression that the responsibility can be completely shifted to their construction contractor. In New York State, that is simply not the case. Under New York laws, ultimate responsibility for the impact to adjacent properties remains with the building owner of the construction project.

### Step One: Plan

It is prudent planning to be proactive and enlist the expertise of a proven legal advisor rather than being forced to scramble for help after something bad has happened – your project falls woefully behind schedule or your project budget is exceeded or, worse, your contractor causing property damage to a neighboring property. Who should you turn to? Many inexperienced owners simply turn to their real estate counsel who handled the closing or financing. Rather, seek the advice of a proven construction law firm that is fluent with the language of construction and dedicates its practice to representing owners, developers, institutions, architects, engineers, construction managers and contractors. Construction counsel, in addition to anticipating and protecting against problems that can arise during the construction process, can help guide you through the labyrinth of retaining the design and construction teams and prepare construction contracts in such a way that, at the end of the project, can save you multiples of the legal expense invested at the outset.

### Step Two: Communicate

Establish a dialogue with your neighbors. Let them know what you are planning to do on your property. There is a finite amount of real estate in New York City. With ongoing construction projects dotting the city landscape, it comes as no surprise that there is a tremendous amount of litigation arising out of disputes between adjacent property owners. Consequently, successful building owners do not refrain from interactions with their neighbors. If you're a property owner, you want to minimize disruption of your building operations that may include retail or office uses as a direct result of construction next door. On the flip side, if you own a residence, you don't want the quiet use and enjoyment of your home to be unreasonably

disturbed or impacted by your neighbor's construction. The best advice is to plan ahead and be prepared for surprises before beginning any type of construction project. Experienced construction counsel can explain the benefits of a License and Protection Agreement with your neighbors.

### Step Three: A Comprehensive License And Protection Agreement

In a city as dense as New York, there are numerous potential impacts to neighbors of construction projects: limited property and street access, disruptions to quality of life, safety and many more. A comprehensive License and Protection Agreement accounts for potential adjacent property disputes, provides mechanisms to resolve them and, most importantly, helps to foster or maintain good neighbor relations between the building owner of the construction project and the adjacent property owners.

An effective License and Protection Agreement typically addresses several basic issues such as the following:

- 1) The building owner and adjacent property owners should perform a pre-construction survey of existing conditions and related site exploration, taking into account the projected construction impacts.
- 2) Each adjacent building owner agrees to permit access for staging areas and installation of recommended protection of each property for a limited duration.
- 3) The building owner of the construction project holds harmless the adjacent property owners for damage directly caused by their construction team.
- 4) The building owner of the construction project agrees to reimburse the adjacent property owners for reasonable expenses incurred as a result of the preparation and enforcement of the License and Protection Agreement.

As you consider your plan, also consider important construction impacts that you may want to control and manage. These may include the overall construction schedule and adjacent traffic patterns, debris removal and containment, equipment deliveries and storage, utility relocations, safety measures such as netting and protecting scaffolding, among other effects. Construction impacts are temporary, but the relationships you have with your neighboring buildings are long term.

*Raymond T. Mellon*  
Senior Partner  
*Timothy F. Hegarty*  
Partner  
Zetlin & De Chiara LLP  
801 2<sup>nd</sup> Ave # 17  
New York, NY 10017  
Tel: 212-682-6800  
[www.zdllaw.com](http://www.zdllaw.com)