

Will New Rules Kill Mid-Level Construction in NYC?

December 30, 2025
By Daniel Schneider



In politics, in building, in personal goods, and in anything else, for years now I've been asking the same question...how is that going to be paid for? New government programs sound great if the funds are available, but if they will require raising taxes, in my lifetime, it has been a nonstarter. My kid wants a drone for Christmas, but I can't afford it. And for builders and contractors, new legislation has led to another step in the direction of development being just too darn expensive.

RPAPL 881 was amended and recently signed into law by New York Governor Hochul, and it contains provisions that will drive development costs even higher. In my opinion, amendments will either cause or contribute to pricing the small and medium size players out of the market, thereby impacting all construction projects other than the very, very biggest. Anecdotally, New York buildings have been turning over beautifully at all economies of scale. Many tenements of old have been replaced by new, more modern low and medium rises and other types of buildings. The city now has a vibrant new look, and I don't just mean the skyscrapers. I would hate to see that stunted.

The principle behind amending RPAPL 881 was a good one, to make an extraordinarily ambiguous statute more specific. Its aim was to provide guidance and to manage everyone's expectations. However, in my reading of the final language, even though the governor has requested amendments, the bill primarily opens new cans of worms rather than closing them.

For instance, there's expanded consideration of the occupants of multiple dwellings. Under the old law, developers typically only dealt with neighboring boards and building owners. Now they are going to have to deal with the tenants and occupants, too. Litigation is going to be untenable insofar as requiring joinder of numerous parties, to effectuate service on that expanded number of people, and to engage with many more parties in the litigation process. Negotiations will be just as onerous. Agreements will have to specifically consider the needs and wants of everyone affected down to the individual. Each individual in a building will have expanded standing and a larger seat at the table to assert their own priorities.

In addition, the new bill provides for the potential of a license fee for a reduction in value of a neighboring property. This will impact costs across multiple areas. In litigation, it will require expanded expert testimony and fact-finding, and in a negotiation context, practitioners will be seeking fees higher than what was previously available on this basis.

In my humble opinion, the largest problem with this bill, actually benefits the developer over the neighbor. I read the legislation as having a private takings clause. The new bill permits a court to grant a developer the right to underpin the adjoining property. If you understand what underpinning is, you will know that this inclusion constitutes a permanent takings clause that does not have to involve any government. Eminent domain in a private context, is not permissible. Only governments may seize property from others on a permanent basis, and even in those cases they must provide fair market value (which, if implemented, would be an additional cost to the developer) as a result, I believe this provision to be unconstitutional.

In this world where insurance costs for New York development are through the roof, or strict liability should cause any developer to look over their shoulder, anything that further drives up development costs, in my opinion, is going to kill mid to low-level development. Jobs that are under \$5 million, those jobs that the big guys don't want to do, the risk will simply be too high for the medium and smaller players. I fear that aside from the ivory towers, the buildings in NYC will be left to crumble. There will be too few willing to take the risk due to ever escalating costs.

The underpinning rule is at least one portion of the bill that I believe to be unconstitutional, so if that can be attacked, perhaps they will go back to the drawing board and start again.

**The impressions contained herein are the impressions and interpretations of the author based upon review of the new statutory language, synthesized with existing law; not on any updated decisional authority.