

2020

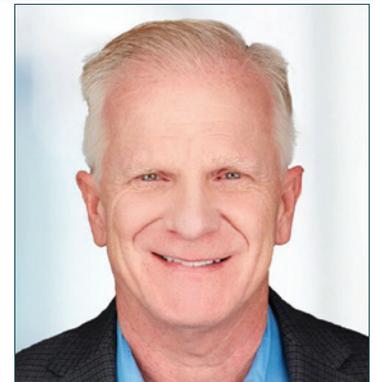
NEW YORK

TRAILBLAZERS

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PIONEER SPIRIT Raymond Mellon says change is the constant of New York. “That’s the dynamic of commerce, but also a pride of New Yorkers.” Change isn’t necessarily easy, however, especially when property owners try to restrict new development on adjacent tracts. Mellon, a member of the city’s small but active construction bar, found a solution in an obscure statute: section 881 of the Real Property Actions and Proceedings Law. It allows developers to initiate an action to obtain a license to enter adjacent property when it’s necessary for construction purposes. Mellon’s discovery almost 20 years ago revolutionized the use of license agreements in construction around the city.

TRAILS BLAZED In the early 2000s, Mellon’s developer clients were running into obstacles created by neighbors who — for a multitude of reasons — simply didn’t want new construction going up next door. Their roadblocks led to costly delays. So, coming across the statute was something of a eureka moment for Mellon. “I said, ‘You know what? People aren’t using this, but this is right on point.’” The statute also protects the neighboring property owner’s rights, requiring developers to pay for any disruptions caused by the construction. Mellon has used the statute hundreds of times in nearly two decades. “You can’t put a shovel in the ground nowadays without having a license agreement with your neighbor.”

FUTURE EXPLORATIONS The statute is still open to judicial interpretation, which will determine its scope in future construction projects. But Mellon sees an evolution in licensing agreements brought on by events like the coronavirus outbreak. He thinks the severity of the outbreak demonstrated that pandemics should be included in license agreements and other construction agreements as force majeure events, nullifying contracts. “It is not sufficient to rely up ‘acts of God’ in the hope it includes a pandemic.”

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