

## The 'party' is over; wall between buildings crumbles



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A client calls on a Friday afternoon with the following query: "Can we tear down the party wall between our building and the adjoining building to our east?"

By way of background, the client bought a four-story building in Midtown Manhattan nine months earlier for more than \$25 million with the intent of demolishing the building and erecting a 15-story mixed use building with retail on the ground level and a private hotel above.

The survey from the purchase of the building showed the existence of "a party wall to an unspecified height."

The client only learned the extent of the party wall during the demolition of the building.

There was no party wall agreement filed of record with the Office of the New York City Register as is the norm and the client had a very tight construction schedule with no room for delay. So – would the absence of a recorded party wall agreement doom moving forward?

Could it cause a) unwanted delays to the construction schedule; b) the adjoining property owner holding up the project for a near ransom; or c) drawn-out litigation to resolve the mess? And the answer was – d) none of the above – to the relief and delight of the client. How so? Read on.

To start with, a party wall is generally a wall located on or along the property line of two adjoining properties and used

for the benefit of both properties. The New York City Administrative Code § 27-232 defines a party wall as "a fire division on an interior lot line common to two adjoining buildings."

In Manhattan, where buildings were built and continue to be built up to the property line, party walls between adjoining buildings are common.

As these older buildings are torn down to make way for new and larger structures or the existing buildings are rehabilitated while adding additional floors above, the respective owners and developers frequently find themselves confronted with party wall issues either on one side of their property or on both sides, as did our client.

If a dispute arises between adjoining property owners over a party wall, the dispute may end up in protracted negotiations or worse yet, in litigation with the unwanted resultant delays in construction and completion of the project.

Typically, a party wall extends onto each property for several inches with each building utilizing the party wall for support of each respective building.

The structural members of each building are embedded into the party wall. This mutual use of the party wall creates obligations and rights of the respective owners as to the use and continued use of the party wall by the adjoining buildings.

The land on which a party wall is constructed remains the property of each respective owner, but the title of each owner is subject to an easement to which the other adjoining owner is entitled.

Normally, a party wall is established by a written agreement between two adjoining owners. This written agreement is filed in the appropriate land records office. However, in the absence of any written agreement between two adjoining owners, the relationship of each owner with respect to the party wall is treated the same as though a written

party wall agreement existed, i.e., each owns so much of the party wall erected on its respective property and each has an easement in the adjoining parcel for the necessity of support of each owner's respective building.

In the matter at hand, the client was presented with a party wall straddling its property line "to an unspecified height" as noted on the survey. Our client encountered the party wall during demolition of its building.

The adjoining property owner had, in years past, demolished the original building on its site and constructed a new building.

However, while the party wall was left in place for the obvious support of the existing building on the property our client eventually purchased, the newly constructed building on the adjoining property did not make use of the party wall for support.

If the client could remove the party wall the square footage taken up by the party wall could be incorporated in its new building.

So what was the outcome? When the adjoining property owner demolished the building and built its new building without using the party wall in its new building, the "necessity of support" on its side of the wall came to an end.

Our client then was left with the following two options: (1) leave the party wall in place for the support of its building; or (2) demolish and remove the party wall, thereby putting a definitive end to the easement of the adjoining property owner therein.

Faced with these two options, the wrecking ball came down quickly and the party wall was reduced to rubble with the client gaining the additional square footage in the new building previously occupied by the party wall.