



Damage caused by a hazard tree may be the owners responsibility.



Determining public or private trees may vary by city.

Trees and Neighbors

AND THE LAW

Or, some good advice so you and your client don't get sued

By Brandon
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On any given day, arborists throughout the country are unwittingly dragged into neighborly conflicts. Trees are almost universally praised for the benefits and beauty they bring to the neighborhood. On the other hand, that same tree is almost universally damned when it bothers one neighbor but is owned by another. It's not uncommon for a pruning crew to be requested to "show up on Thursday when I know my neighbor will be gone" or give advice as to whether or not this guy's branches can be pruned back to improve their views. So, what can you tell your client, and what should you be practicing to keep yourself out of a lawsuit as well? Let's take a look at some common "frequently asked questions" arborists get about trees, their neighbors, and the law.

Full legal disclaimer: These are the "general rules of thumb" around the country, but, of course, there are local laws and ordinances that will supersede these. Always get to know your local laws by contacting the municipal forester or through your local ISA Chapter. I also found the real estate industry to be very helpful when researching this article, as it turns out trees and their ownership come up frequently when purchasing property.

Is this my tree or the city's tree?

Local ordinances will determine which trees are considered public and which are private. Trees in parks and on other public grounds are certainly considered the city's responsibility, but it

varies greatly as to what boulevard trees are considered public. Some include only trees on the street-side of the sidewalk; others include all trees within fifteen feet of the boulevard, even if that tree is in the middle of someone's yard. If the tree is determined to be the city's, pruning and removal is the onus of the municipality, and requests for this maintenance can be submitted to the city forester. You may also need the city's permission if you wish to have it serviced or removed by an arborist. The city, however, does not need the homeowner's permission to perform pruning or removal on a public-owned tree.

My neighbor's branches hang over into my yard; can I prune them back?

Yes. Legally, you have the right to prune branches and limbs that extend past the property line. However, the law only allows tree trimming and tree cutting up to the property line. In most areas, permission is not needed by the neighbor to do this, but a good practice would be to have the neighbors in communication with each other. As the arborist, you may not go onto the neighbor's property without permission or do any practices that may destroy the tree. If you do harm the tree, you and the homeowner could be found liable for up to three times the value of the tree.

A large tree hangs over my yard, but the trunk is in the neighbor's yard. Is this my tree or theirs?

This is a common issue in urban areas, and is a frequent cause of disputes among neighbors. In this case, even if nearly 100 percent of the canopy is over your yard but the trunk is clearly in the neighbor's yard, the tree belongs to the neighbor. If you wish to prune back the branches to the property line, that falls under the same rules as above.

There is a tree directly on the property line between my house and my neighbors, who is responsible for this tree?

When the trunk is directly on the property line owned by two or more people, it is referred to as a "boundary tree." In the case of a "boundary tree," all of the property owners own the tree and share responsibility for it. Any pruning or tree removal requires consent of all the tree's owners.

The leaves from my neighbor's tree keep blowing into my yard, is it their responsibility to rake them up?

Nope. We all wish this were the case, but leaves are considered a natural product. Even if the leaves cause damage, like clogging your gutters or pipes, you have no legal claims against the owner of the tree. Additionally, you are responsible for cleaning up any natural products that fall into your yard.

If, however, the tree branches that are shedding the leaves are hanging over your yard, or the tree trunk is encroaching on your property, then you have a right to trim those branches up to the property line, but it is still not their responsibility to clean up fallen branches.



Trees can be pruned to property line. Always get permission to go on neighbors property.



This tree was a boundary tree and paid for by both homeowners.



The property owner may have to compensate the neighbor if construction damages their trees.

If my neighbor owns a fruit tree, and the branches hang over into my property, can I eat the fruit?

No. The fruit of the tree belongs to the owner of the tree even if the fruit hangs into your yard, so don't pick any of the fruit without permission. Rules about fallen fruit, however, vary across the country, so check your local laws to see if you can eat any fruit that falls off the tree. Oddly, if the fallen fruit is considered a nuisance to you, it is considered a natural product, no different than leaves, and thus it is not their responsibility to clean it up.

My neighbor did construction in their yard, and in the process killed a tree that's just on my side of the property line. Can I get compensated for my loss?

In most cases, yes, the tree owner has the right to sue for damages. Anyone who engages in tree removal, tree cutting, or injury to the tree without the owner's permission is liable for compensating the tree owner. In many cases, the tree owner has been compensated by up to three times the value of the tree. We know, of course, that construction damage can take several years to really start to show up. This often lands arborists in court as an expert witness to help show work done in the past is what caused a tree to die recently.

A storm knocked down my neighbor's tree onto my property, causing damage. Are they responsible for the damages?

In this case, it depends. If the dispute got all the way to court, the judge will probably apply a reasonable care standard. If your neighbor took reasonable care to maintain the tree, and the tree did not seem to a reasonable person to be threatening to fall, then they will probably not be held responsible. If a reasonable person could not have avoided this from happening in any way, then it will be deemed an "Act of God," and the neighbor will not be liable.

If, after applying this reasonable care standard, however, the judge finds that a reasonable person should have known that the tree branch posed a danger of falling, or that the neighbor never did reasonable inspections to maintain the tree branch, then the neighbor could be found liable of negligence, and therefore responsible for damages to your property. This can also get arborists in trouble if they recently performed a reasonable inspection and did not determine the tree to be a hazard. Always document your inspections, as you may be called in later to justify your findings.

The tree that caused damage was a public tree; is the city responsible for damages?

If you were walking through a public domain, such

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as a park or a street, and you were injured by a failing tree, you may have grounds for a tort claim. Tort is a term derived from the Latin term *torquere*, meaning twisted or wronged. Tort law dates back to Medieval England and, while tort covers many different types of laws, they are commonly used in the United States as legal means of holding a public entity, such as a municipality, responsible for damages that occurred due to the municipality's negligence with regard to maintaining the safety of their public trees.

Tort claims can mean big dollars paid out by the municipalities. In New York's Central Park, several recent tree-related events have resulted in significant settlements. In 2009, a father of two was injured when a large rotted tree branch fell and struck him in the head in Central Park. The case was settled later that year for \$11.5 million. Just three months after that, another man was killed by a failing American elm, resulting the city paying \$3 million to his family. In both cases, the suits claimed that the City of New York and the Central Park Conservancy were negligent, and should have properly inspected and maintained the park trees. The Parks Department has less than 100 climbers and pruners for more than 2.6 million trees, so the expectation that each and every tree is structurally sound is absurd, but the city is still held to this standard.

My neighbor's tree looks like it's going to fall on my house. What should I do?

Homeowners are responsible for maintaining the trees on their property. Legally, they have two duties: make reasonable inspections and take care to ensure the tree is safe. Therefore, if a reasonable inspection by an arborist shows that the tree could be dangerous, your neighbor is responsible for the tree removal. If your neighbor does not remove the dangerous tree, and the tree does in fact cause damage, your neighbor can be held liable.

If you have spoken to your neighbor about the tree, and they have not done anything about it, the tree may constitute a nuisance. You could file a nuisance claim, and if the court sides with you, they can order the tree removed by its owner.

My neighbors complain that the tree in my yard is blocking their vista view; do I have to trim it?

Usually, no. So long as the tree is not posing a safety hazard, there are not normally laws that protect a person's view. Certain communities or homeowner associations, however, may have height limits or view ordinances that may make you responsible for keeping the trees short. If there are no legal guidelines for tree height, talking with the neighbor about how much they would like the tree reduced by and getting them to pay, or at least split, the pruning costs may help resolve it.

Your clients will often look to you, as the arborist, to be the legal expert as to what they can or can't do with a disputed tree. We are, however, tree experts and not lawyers. If there is ever

a case where you are not completely comfortable with the local laws and ordinances, do not perform any service until you know exactly what you can or cannot do. Waiting a week to perform work while you wait for the neighbors to come to an agreement is much better than spending a week in court. **AA**

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Additional Resources

Tree Owner's Rights and Responsibilities (University of Tennessee)

<https://utextension.tennessee.edu/publications/Documents/SP687.pdf>

Trees and Neighbor Law

<http://stores.treeandneighborlaw.com/>

How to Recognize Hazard Trees (USDA Forest Service)

http://www.na.fs.fed.us/spfo/pubs/uf/sotuf/chapter_3/appendix_b/appendixb.htm



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