

PART TWO

The Surveyor & the Tree



Tree Law, a Comprehensive Review

In the first installment, we studied the distinctions of tree ownership and the specific ways they affect the surveyor's client. In this final installment, we will tell of the responsibilities and ramifications of tree ownership with damages and rewards being explored.

The previous installment ended with the tree and the adjoining owner. What were his remedies and his responsibilities for roots and branches from his neighbor's solely owned tree?

So, what are the tree owners' responsibilities for personal injury and property damage caused by his tree? Not too long ago, the "rural" tree owner had a set of standards distinctly different from those affecting the "urban" tree owner. The rural tree owner for the most part had no liability for any damage or injury caused by his tree. A number of fairly recent cases prove this distinction is becoming muddled and the clarity of the rural/urban dichotomy is disappearing. If a tree is obviously rotting or dead, the tree owner probably will be held responsible. Nearly universally, much

like proving negligence in the case of a surveyor, the tree owner will be held to a duty of care or the duty of common prudence. Under similar circumstances, what would the average and prudent land owner do? If the tree owner knows or should have known the tree posed a threat of damage or injury, most likely, the owner will be held liable. This can range from tree roots raising a sidewalk so someone trips and is injured to branches or entire trees falling from blight, rot or prior damage caused by natural causes.

Should a tree merely fall, it's not always easily explained away as an act of God. In July, 2012, a 40 ton tree simply fell onto a traveled roadway in Fairfax, Virginia. A 64 year old gentleman had the misfortune of driving down that road in his Mercedes at the precise time the tree fell. He lost his life.

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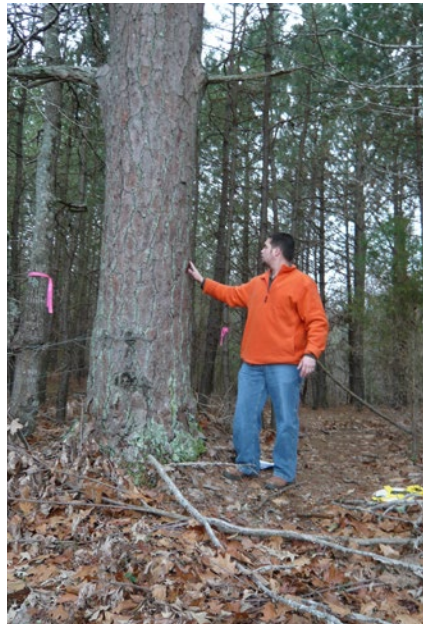
...an act of God?... There is a term “hazard tree.” This is a tree with a defect and a target.

The Fairfax Urban Forest Management Director showed up on site and immediately ordered the destruction of a second massive oak nearby. When the 100 foot length of the original tree was inspected, it was found that 98% of its roots were rotten. It was also found that the tree had suffered from lopsided trimming due to utility line clearing. By mid-August, the Virginia DOT had identified 59 dead or declining trees on their right of way within the area, and all were slated for destruction. There is a term “hazard tree.” This is a tree with a defect and a target. That would be a house, sidewalk or roadway in the path of an unstable tree (article by Pihlaja and Stromme). Was the gentleman’s demise due to an act of God or was it negligence?

According to the article from the Bench and Bar of Minnesota (Pihlaja and Stromme), to qualify as an act of God, all of the following elements must be met: 1) the accident must have happened from a force of nature that was unforeseeable; 2) that force must have been the sole cause of the accident and 3) the accident could not have been prevented by using reasonable care. The necessity of hiring an attorney cannot be stressed enough.

“For a view” In certain circumstances, rights to light and view are protected under English common law. Property owners in the U.S. are not afforded those same rights except by statute or

ordinance. The use of solar power has probably been the impetus for the majority of local light/view ordinances. The disproportionate value of a tract with a view is best insured by private easement. Some localities have adopted ordinances aimed at protecting views but for the most part private easements are the best method. Be certain, before clearing trees,



Be certain, before clearing trees, your client knows well where the line lies, and cease all clearing at that line.

your client knows well where the line lies and to cease all clearing at that line. In an ongoing New Jersey case, to enhance his view, the uphill property owner cut down 221 trees on his neighbor’s property. The offender’s attorney claims his client thought it was his property, it being on a hill and all, it was confusing just where the line was. The Police Chief disagreed saying “a few feet he could understand. Several hundred, not so much.” Charged with second degree theft and criminal mischief, the perpetrator is accused of cutting down \$1 million dollars of trees and “faces 10 years in jail... For a view.” The necessity of hiring a surveyor cannot be stressed enough.

“Products of the tree” If a coconut falls from your neighbor’s tree, straight down and smashes your car windshield, it’s your neighbor’s coconut. Should a bushel of sweet peaches or apples hang easily within your reach, on your side of the line ... well, no one is looking. If the fruit is on the ground, then it’s a no brainer, the blatant trespasses are easily taken care of. Wrong in most cases. In practically all situations the fruit of the tree belongs to the owner of that tree, no matter which side of the line it is on. If the grapefruit tree is a boundary tree, all neighbors share equal bounty in vitamin C. I could find no agreement as to whose fruit it is once it hits the ground. In Georgia, by statute, any pecans falling on



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a public right of way belong to the tree's owner *until the end of the harvest season.*

The Tree and Damages

Courts and insurance companies recognize the *Registered Certified Arborist (RCA)* as the primary source for objective valuation of trees. Certification for qualified individuals is through the International Society of Arboriculture.


The primary methods of valuation are 1) the comparable sales method, in which a licensed real estate appraiser compares the value of the damaged property with undamaged properties, 2) value loss to the property where the enhancement value of the trees and landscaping as a percentage of the total value of the entire property is evaluated, 3) reasonable restoration where basically the trees or shrubs are replaced with somewhat identical trees or shrubs and 4) the Council of Tree and Landscape Appraisal Method. This complicated method would most likely be the one used by the professional arborist. A handbook published by the Council of Tree and Landscape Appraisers titled "Guide for Plant Appraisal" is available through the



In practically all situations the fruit of the tree belongs to the **owner** of that tree, no matter which side of the line it (the fruit) is on. In this case, the line is between Tennessee and North Carolina.

International Society of Arboriculture; Box 3129; Champaign, Illinois 61826.

A white oak in one circumstance may be worth \$35,000 with the very same tree being valued only for its lumber in a different circumstance. If problems arise, call the arborist early on, *before* you call the attorney. Generally, trespass involving trees is much more serious than simple trespass over property. Different states allow for additional monetary compensation in events of trespass or intentional damage. Tennessee allows for double damages if it's a simple mistake of trespass and treble damages for intentional trespass. Georgia does not allow for additional damages. The damage statute for each state can be found at: <http://www.nolo.com/legal-encyclopedia/property-disputes-between-neighbors-state-laws-65207.html>

In the course of researching this article, a common theme continually occurred. Keep up good communication with your neighbors. Nearly every article or book I consulted stressed the importance of good neighborly communication. While you're out there cracking pecans or wiping peach juice off your chin, talking to your client or the neighbor, keep up a good sincere conversation. It's an unspoken obligation for the surveyor to keep peace in the valley and avoid neighborly conflict (see Justice Cooley). It's also a good way to ensure that the tree (in all its beautiful splendor, the subject of poems, offering up a cornucopia of fruits and nuts as well as being inviting with its welcoming shade) never becomes that unnecessary *pain in the butt.* 

Sources

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