



# Tree Conservation Notes

Athens-Clarke County Community Tree Program

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## Trees and the Law: The Legal Implications of Owning and Managing Trees in Georgia

### ***Introduction***

Trees are wonderful assets. They reduce our utility bills, increase our property values, filter our stormwater, and provide us with a better place to live. In a 50 year life, a single tree can provide us with over \$160,000 of ecological benefits. A single, mature landscape tree may be worth tens of thousands of dollars. Unfortunately, all trees eventually deteriorate and die. During this process, they may shed large limbs, or suffer whole-tree failure. If left unmanaged, a declining tree quickly turns from an asset to into a liability.

We frequently get calls from residents who are concerned about their neighbor's tree. In Georgia, if your neighbor's seemingly healthy tree falls onto your property, your insurance will be required to file a claim; If your neighbor's tree had known defects, it will be up to their insurance to file a claim. There are three basic things to consider when evaluating the impacts of a recent tree failure. 1) Were there portions of the tree that were obviously dead? 2) Were there signs of decay/decline that were easily detectable? 3) Who owns the tree? This last topic can be one of the most difficult factors in tree risk management.

### ***Dead Trees/Limbs***

Dead trees and large limbs are an obvious hazard. While they may be naturally occurring, the damage they create is clear and preventable. An owner is responsible for keeping their property safe. If a dead tree or limb causes damage to an invited guest or neighboring user, the owner of that tree will be held responsible for the tree and their insurance may choose to deny a claim in support of them. *Klein v. Weaver* established that dead tissues must either be readily apparent or documented. A single small dead limb does not constitute negligence; a tree full of dead limbs does. Any documentation about the tree's condition prior to failure can significantly strengthen a claim. *Wesleyan College v. Weber, et al.* set the precedent for forensic arboriculture to be used in determining negligence. In this case, an individual was killed when a tree fell into the street. A number of adjacent dead trees and supporting testimony was used to determine that the college should have dealt with the tree prior to failure.



*The dead tree in these pictures is an example of an obvious hazard. The owner could be held liable if this tree was to injure someone on the adjacent street.*

### ***Decay and Decline***

Declining trees are more difficult to deal with than dead trees. While dead tissues may be easily recognized, root and trunk rot may continue to develop without obvious signs or symptoms. A hunch or innate fear does not provide just cause for the removal of your neighbor's tree. *Cornett v. Agee and Klein v. Weaver* established that decay must be "patently visible" before an owner can be held liable for decay-related failure. This means that mushrooms, fungal-brackets, or open cavities must be clearly visible before liability can be determined.



*These mushrooms, brackets, and decay are examples of clearly visible defects that an owner can be held liable for.*

### ***Ownership***

It is understood that owners are responsible for their property, but what happens when your neighbor won't care for their tree? What happens when you share ownership of a tree? These issues complicate an already difficult matter.

Boundary line trees are common in the urban landscape. People use trees as natural screens to separate their property from their neighbor's property. Surveyors commonly use large trees as landmarks between property lines. Unfortunately, as trees age, their ownership may change as they grow across a property line. *Willis v Maloof* established that adjoining landowners do not co-own boundary line trees; instead they each own the part that rests on their side of the property line with an "easement of support" from the adjoining neighbor. It went on to add that each owner shall expect the adjacent owner to manage their part of the tree so as not to injure or destroy the tree. Essentially, property owners retain the rights to the portion of the roots, trunk and limbs that reside on their property and they can alter them as they please as long as they do not significantly alter the health of the tree.

If you and your neighbor do not agree on a course of management for a particular tree, it is best to document your actions. Work with a Certified Arborist to evaluate the tree. Determine which management actions are needed to ensure the safety of nearby people and property and then notify them of your intended actions using Certified Mail. This may sound extreme, but under Georgia law, a tree service that makes a mistake with a boundary line tree can be held liable for the landscape value of the tree.

### ***Insurance Issues***

If you have notified your neighbor of a potentially hazardous tree and it later damages your property, it is best to work with your insurance company to get the matter resolved. File a claim with your policy and turn over copies of all documentation about the tree's condition prior to failure. Your company will then follow up with your neighbor's company to settle the claim. Like all legal matters, documentation is a key component to strengthening your case. A fence-side conversation about the tree is neither relevant nor documentable. A written option of a Certified Arborist delivered via Certified Mail is difficult to dispute.

Some insurance companies request that all trees within a certain distance of a structure be removed. This tends to be an overreaction to a potential hazard. Work with your company to see if a written option by a Certified Arborist will satisfy their requirements. If this won't work with them, consider selecting a different insurance company before you remove thousands of dollars of value from your property. Athens-Clarke County offers tree management consultations to county residents as a tax-funded service.

Many insurance policies provide some coverage for trees. This coverage is generally limited to \$500 per tree with a maximum total coverage of 5% of the dwelling limit. This commonly covers fire, lightning, vandalism, automobile damage, or theft. Damage caused by wind and hail is not covered by most policies.

Ultimately, neighbor tree issues can be resolved if people act cautious and neighborly. Good communication with your neighbor will help to clarify risk tolerances and management goals. Documentation is a key factor to minimizing your liabilities in a tree-related accident.

**References:**

Bloch, Lew. 2000. *Tree Law Cases in the USA*. Bloch Consulting Group, Potomac, Maryland.

Georgia Office of Insurance and Safety Fire Commissioner. Homeowner Insurance Frequently Asked Questions: Trees. [www.oci.ga.gov/ConsumerService/FAQ\\_Home.aspx](http://www.oci.ga.gov/ConsumerService/FAQ_Home.aspx).

Harris, R.W., Clarke, J.R., and Matheny, N.P. 2004. *Arboriculture: Integrated Management of Landscape Trees, Shrubs and Vines*. Pearson Education Inc., Upper Saddle River, New Jersey.

Lilly, S.J. 2001. *Arborists' Certification Study Guide*. International Society of Arboriculture, Champaign, Illinois.

Merullo, V.D. 2010. Developments in GA Arboricultural Law: Cases and Statutes of Interest. [www.treeandneighborlaw.com](http://www.treeandneighborlaw.com).

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For more information, visit the [Athens Clarke County Community Forestry webpage](http://www.atclark.org/CommunityForestry) or contact the Community Forestry Coordinator (762) 400-7519, 2555 Lexington Rd, Athens, GA 30605.