

# JANUARY 2008

## **If a Tree Falls and My Neighbor Hears It...Who Pays?**

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**W**ith the area's increasing population density, it is easy to imagine the many ways in which neighbors may bump into each other. Unfortunately, disputes tend to arise when conditions on one owner's property create a disturbance on another owner's property. The dispute eventually boils down to the central issue: to what extent can one property owner dictate the way in which another property owner maintains his or her property?

Somewhat surprising, trees can generate significant conflicts between neighbors. While a healthy shade tree may provide numerous benefits to an owner's property, the roots and branches from that tree may be causing problems on the neighbor's property. And what happens when a tree falls from one property and causes damage to the neighboring property? Who pays for the removal and the damages? Of course, these questions do not simply arise between individual owners – any association that has trees on its common areas will at some time be forced to address these same issues.

### **A Tree Falls...Who Pays?**

The most common questions that clients have involve dying or diseased trees falling on a neighboring owner's property. Unfortunately, the questions typically arise after the tree has fallen and caused damage to an owner's property. In many cases, the tree came from common area property, and a frustrated owner feels that the association should therefore be responsible for the damages caused by "their" tree.

In Virginia and Maryland, the general rule for fallen trees, or similar accidents that may be qualified as an "Act of God," is that the affected owner is responsible for the damages to their own property, including clean up, removal and similar expenses. Such accidents are normally covered by the affected owner's insurance, and are usually resolved by reporting the claim. As a result, the association should encourage the affected owner to contact his or her insurance company before submitting the claim under the association's policy.

Please note, however, that the exception to the general rule is that the owner of the property where the tree originated will be responsible for damage to a neighbor's property if the owner knew or had reason to know that the tree presented a danger to adjoining properties. For example, if a tree was diseased and had been weakened by previous storms, it may be fair to say that the owner had reason to believe that the tree would fall and, judging by its size, damage a neighbor's property. Otherwise, the accident is considered an "Act of God" and the affected owner is therefore responsible for the damage to his or her property.

As your association has a duty to maintain the common areas, the Board should take steps to ensure that the common area trees are being routinely inspected in order to identify any trees that may be in danger of falling and causing damage to neighboring properties. The Board and management should also be sensitive to any concerns raised by neighboring owners and members regarding particular trees, as such concerns could later be used to show that the association knew that a particular tree was in danger of falling.

### **Your Tree, My Problem**

A less common but more difficult concern arises when a tree encroaches upon a neighboring property. Roots can grow into sewer lines, disturb foundations, sidewalks and patios, and branches can interfere with drainage or damage siding or windows. The issues created by the tree may not be immediately apparent, but can be significant and may ultimately require that the tree be removed entirely. What rights does an

affected owner have in order to protect his or her property when a neighbor's tree is causing problems?

For some time, the general rule in Virginia was fairly well-settled. An affected owner could always engage in "self help," meaning that the owner could trim back roots and branches to the property line. If the roots and branches were "noxious" and caused "sensible injury" to the owner's property, the affected owner would have a claim for damages against the owner of the tree. However, the affected owner had no right against his or her neighbor to demand that the tree be removed or take other steps in how the tree is maintained.

Recently, however, the Virginia Supreme Court has modified this rule. The Court preserved the affected owner's right of self-help, but ruled that his or her rights against the tree's owner should no longer depend on whether the invading tree or shrub was found to be "noxious." Instead, the affected owner need only prove that the encroaching tree has already caused actual damage or that actual damage is imminent. The owner of the tree would then be liable for damages to the affected owner and may be required to cut back the encroaching roots or branches. Most importantly, the Court ruled that the affected owner may seek equitable remedies against the tree's owner. In other words, the affected owner can ask a court to enter an order requiring that the encroaching tree be removed.

### **Maryland Trees; Urban or Rural (or Suburban?)**

Maryland continues to adhere to the common law regarding trees, with some erosion of the common law as the state transforms from rural to urban. A landowner in Maryland must know that the tree that causes injury constituted a danger and that the owner knew of the danger or should have known of the danger for the landowner to be liable for damages. Maryland adheres to the idiom of “*sic utre ut alienum non laedas*: -- so use your own as not to injure another.”

The landowner has the duty of reasonable care to prevent a tree from falling and causing injury. In a rural setting, the burden of inspection is so out of proportion of the harm to be prevented that the prevailing rule has held the owner of rural lands is not required to inspect his land to make sure that every tree is safe.

In an urban area, usually cities, the ordinary rules of negligence apply in the case of natural conditions. To those who dwell in urban areas with few trees, the inspection requirement is applied and considered reasonable.

An emerging area of the tree laws addresses the ‘Suburban Forest,’ usually defined as the open spaces encouraged by government, and the Maryland Court has declined to increase the liability of the land owner for the government ordered common area beyond that of the rural landowner. Maryland has declined to require urban inspection responsibility to suburban forest, absent actual knowledge of a diseased or declining tree, or absent any fact that would charge a landowner with constructive knowledge of a tree ready to fall.

We continue to recommend to our Maryland client with common area to conduct periodic inspections and to address any dead or dying trees to limit their liability exposure. As the state continues to become more urban, the burden on the Maryland Association will continue to increase with regard to tree maintenance, and the liability of the “Suburban Forest.”

Of course, this is only a sample of the many issues that may arise between you and your neighbors. These disputes often rarely are simplified as we have outlined them in this memo. If a dispute is developing with one of your neighbors to your association, please do not hesitate to contact one of our attorneys.