

## Worried Your Neighbor's Tree Will Fall on Your Property?

Is your neighbor too cheap to take care of their trees, putting your property at risk? It's a common problem, and sometimes bringing it to their attention gets no results. A property damage and personal injury attorney weighs in on what to do next.



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“Often homeowners and commercial property owners do not understand the importance of maintaining vegetation – primarily trees – and this is especially important if they have neighbors whose homes or offices could be damaged by falling branches or the trees themselves,” observes La Jolla, Calif., attorney Evan Walker, whose law practice concentrates on property damage and personal injury.

“When buying a house, the last thing considered is the added cost of yard maintenance. With the price of homes off the charts, few real estate agents will tell buyers, ‘And don’t forget that you will need to maintain these trees, and the yearly costs will be significant.’”

And how *significant* is *significant*?

“Depending upon the size of the property, number and types of trees, and proximity to adjoining homes or other structures, the yearly or bi-yearly expense of hiring tree trimmers can run into the thousands of dollars.

“But that’s often not the more critical problem,” Walker points out. “It is *liability*. Negligently failing to maintain your trees in a safe condition invites litigation when, as a direct result of this negligence or willful behavior, property damage, personal injury or death result,” he underscores.

Most lawyers recall cases discussed in law school under the heading, "Owners and Occupiers of Land," where jury awards have been through the roof when it was shown that the owners had actual notice of the danger their trees posed to neighbors but chose to ignore it.

### **When Your Neighbors Are Misers**

When a neighbor's tree falls on your property, guess who has to file the insurance claim, pay the deductible and hope that their premiums won't rise because of it in the future? That would be you. Unless you can establish that the neighbors had knowledge of the dangerous condition and ignored remedying it.

This column has heard from so many readers over the years who live in fear of their neighbors' trees falling. Many of the concerned readers who reached out to me had already hired state certified arborists whose reports warned of an imminent danger of major property damage or injury *certain to occur*, and had given copies of the reports to their neighbors. Yet the neighbors still refused to take care of the problem.

Often, I phoned these negligent neighbors on my readers' behalf, urging them to do the right thing and have the trees trimmed or removed, only to hear "No! I'm not paying for it, and I don't care what the arborist says. Tell your reader to pay for the job!"

In several instances, within days, what was predicted to happen, did! Resulting litigation frequently revealed these negligent homeowners to have the word "*Miser*" stamped on their foreheads: yards overgrown with vegetation, homes in a state of disrepair and bank accounts flush with thousands of dollars.

I have also found some of my readers to be just as miserly as their cheapskate neighbors, as an email from a New Jersey reader made clear.

"My name is Michele. There are dead trees right behind my fence and I am being ignored by the owners. I need help and am at the point I don't know where to turn. I'm not getting much help from my township. Can you help me?"

So, I phoned Michele and learned:

1. She has a report from an arborist warning, "These trees are as tall as a phone pole and are an imminent threat of falling on her house."
2. The neighbor was given a copy of the report, initially promised to have the trees removed, and then refused.
3. It will cost \$1,700 for the job.
4. Her local government officials have turned a blind eye.
5. Her source of income? "I am extremely comfortable with dividends from my investments."
6. Has she consulted with an attorney for a letter demanding that the dangerous condition be immediately remedied or suit will follow? "No, they charge too much!"

### **Where to Go for Help**

"If it were me, I would alert my city or county authorities, law enforcement, code enforcement and elected representative. As it is a human-interest story, local television and newspapers should be notified. Also, I would contact my own homeowners insurance company, putting them on notice of this potential claim, as that is my obligation under the policy."

When Michele told me that a consultation with a lawyer *costs too much* — in view of her clearly having the financial means and obvious need for legal help — I said: “You are being unreasonable, unfair to yourself and are exposing friends and family who visit you to a known risk of injury – and then you would be sued!

“Receiving your lawyer’s letter, these cheapskate neighbors will realize that you have the ability to drag them into court. I would expect them to react in a very different way, *so after we speak, schedule a consultation with an attorney, please!*”

### **What If You Get the Trees Trimmed, Without Permission?**

I asked Evan, “What if – out of a reasonable fear the trees were on the verge of falling – Michele hires tree trimmers and *without permission* they enter the property, rendering the situation safe and the neighbors sue her for trespass. What would her defense be?”

“Her lawyer would raise the Defense of Necessity, explaining to a judge or jury that the law of trespass recognizes times when, to preserve the greater good, it is permissible – in fact *necessary* – to trespass. We call this *an affirmative defense*, which says, ‘Yes, I did trespass but was justified in doing so as this was an emergency.’”

Evan concluded our interview with two sayings, one 500 years old and from England: “Do not be penny wise and pound foolish.” And the other credited to Benjamin Franklin: “An ounce of prevention is worth a pound of cure.”

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### **About The Author**

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*After attending Loyola University School of Law, H. Dennis Beaver joined California's Kern County District Attorney's Office, where he established a Consumer Fraud section. He is in the general practice of law and writes a syndicated newspaper column, "You and the Law." Through his column he offers readers in need of down-to-earth advice his help free of charge. "I know it sounds corny, but I just love to be able to use my education and experience to help, simply to help. When a reader contacts me, it is a gift."*

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