



Insurance Coverage and Damage Caused by Trees

When a tree limb falls off or a tree is blown over and causes damage, you have three options: file an insurance claim, take an income tax deduction for a casualty loss¹, or file a lawsuit seeking compensation for the loss.² This fact sheet deals with insurance.

What does insurance cover?

Most insurance covers two things: damage that you experience (casualty) and damage for which you are responsible (liability).

What is casualty insurance and what does it cover?

When it comes to residential landscape plants (trees, shrubs, lawns, etc.), casualty insurance generally covers losses caused by fire, lightning, theft, hail, vandalism, or other calamities. Landscape losses caused by wind, a tornado, or hurricane may not be covered, except to cover the cost to remove a fallen tree from a house or other structure and have the tree debris hauled away. The insurance policy often puts a cap on this type of loss. For example, the insurer may agree only to pay up to \$500 for the removal of the debris from a tree that has fallen. Check your insurance policy for the details of your coverage.

What if my insurance does not cover the loss?

The general rule is that losses not compensated by insurance or other means can be deducted as a casualty loss on a person's federal income taxes.³ The Internal Revenue Service defines a casualty loss as "the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual." If the loss is caused by progressive deterioration, the loss does not qualify. Landscape plants (trees, shrubs, and other plants) that are damaged or destroyed by a disease, termites, or other insect pests generally do not qualify as a casualty loss, because the damage is progressive rather than sudden.

If, however, the cause is unexpected and unusual, the Tax Court has allowed a tax deduction. In one instance, the Tax Court found that a black oak tree attacked by two-lined chestnut borer insect died suddenly – within a few weeks – and constituted a casualty loss.⁴ The taxpayers in that case were allowed to deduct the amount of the diminished value of their property resulting from the loss of the tree. By contrast, termite damage does not qualify as a casualty loss, because it is not sudden.⁵

¹ IRS Publication 547, entitled "Casualties, Disasters, and Thefts." See also, 26 U.S.C. 165(c)(3).

² *Guide for Plant Appraisal*, 8th Edition, Savoy, IL: International Society of Arboriculture (1992).

³ Internal Revenue Code, Section 165.

⁴ *McKean v. Commissioner*, T.C. Memo 1981-670, 42 T.M.C. (CCH) 1709 (1981).

⁵ Rev. Rul. 63-232.

What is liability insurance and what does it cover?

Liability insurance covers loss or damage suffered by someone else for which you can be held legally responsible. For example, if a guest slips and injures herself on your home's ice-covered steps, you could be held responsible (liable) for the injury that your guest suffered.

Does insurance determine who is responsible for losses caused by failed trees?

No. A common misconception, even among insurance professionals, is that insurance coverage determines liability. Responsibility for damages (liability) is determined by legislatures enacting laws or by courts deciding cases. An insurance policy is simply a contract to reimburse an individual for losses suffered or caused. For example, if you have a tree in your yard that you know presents a hazard, you will be liable under the law for damage that your tree causes when it falls on a passerby or on your neighbor's property.

Insurance may cover all or portions of the loss, regardless of who is responsible or liable under the law. Your neighbor's casualty insurance may pay for the damage to his property caused by your tree. If the person who is hurt by the falling tree has a medical insurance policy, that policy will pay for medical treatment. Since you are liable for all of the damages, your liability insurance will likely cover most, if not all, of the losses. Often people rely on insurance to cover their losses, without considering who is legally responsible. However, there are always limitations on what insurance companies pay. If you have legal liability, you will be responsible to pay what insurance does not cover.

What should I do if my property is damaged by my neighbor's fallen tree, and my neighbor insists that I can recover only from my own insurance company?

If you have questions about your liability, you should contact a lawyer and not simply take the word of an insurance agent. After all, if you get sued, it will be you – not your insurance agent – who has to go to court, attend depositions, take the witness stand, and endure all of the stresses that accompany litigation. Courts decide disputes based on the law, not on insurance coverage.

Disclaimer: The information included in this fact sheet is intended to be educational, not legal advice. If you have a legal problem and require legal advice, you should consult a lawyer.