

TANGLED BRANCHES: THE LAW OF BOUNDARY LINE TREES

Michael Rome, Esq.
www.hoa-attorneys.com

Even in its urban areas, Georgia is known for its abundance of trees. With such a lush environment, it is inevitable that legal questions arise regarding trees near the property lines. Typical issues for community associations involve common areas and adjoining owners' Lots.

What if a homeowner's tree falls onto the association clubhouse during tornado level winds? What if the homeowner says they are not paying for damages? Can the association trim the branches of a homeowner's tree that overhangs into the common areas? Does an adjoining homeowner have to send a certified letter to the association demanding the removal of a dangerous tree? Could the association still be held liable for damages if the letter is not sent?

Trimming Limbs and Roots.

The law allows you to maintain everything located on your property. This includes limbs and roots of a tree owned by your neighbor. Therefore, you can trim limbs and roots that encroach onto your Lot, but only up to the edge of the boundary line. The exception is cutting the limbs or roots to the extent that it could kill the tree. When there is a question as to whether this may be the case, an arborist should be contacted for an opinion.

In addition to having the right to trim limbs and roots up to the property line, you also have the responsibility to do so. If roots from an adjoining tree intrude into your sewer or water lines, you cannot hold the neighbor responsible for damages.

Who is Responsible for Damage Caused by a Fallen Tree?

If it is an 'Act of God' the owner of the tree is not responsible for any damage to the adjoining property. On the other hand, if your neighbor knew (or should have known) the tree was dangerous, they will be liable in negligence for not resolving the situation. For this reason, the vast majority of cases in Georgia revolve around whether or not the tree's owner should have known that it was diseased, dying or dead.

This is where the erroneous idea comes from that you must send your neighbor a certified letter informing them that the tree is dangerous. The legal myth is that if you don't send the letter, the adjoining owner will not be responsible for any damage if the tree falls.

Although such a letter can be helpful evidence, each property owner has an independent duty to maintain their trees. In Georgia, urban residents are held responsible for conditions that a 'reasonable person' would have been aware, or should have been aware of if properly inspected.

The Question of Insurance Coverage.

An insurance policy is a private contract between the insured and the insurance company. Coverage will be determined by the terms of the policy. In spite of the fact that you and your neighbor are not legally responsible for an Act of God, a policy might cover the damage, along with the cost for removing the tree. Even if you are alleging your neighbor was negligent in maintaining the tree, your neighbor and their insurance carrier may disagree. In this situation, you may want to consider making a claim under your own policy. This way you will get paid for your damages (assuming it is covered) and your insurance carrier can decide later if they want to pursue your neighbor and their insurance company for reimbursement.

Additional Requirements of Covenants & Ordinances.

So far, we have addressed the common law regarding boundary line trees, but covenants and local ordinances may contain additional requirements. The covenants could require the homeowner to obtain association approval prior to cutting down trees on their Lot. Conversely, the covenants or other governing documents may also obligate the homeowner to keep trees properly trimmed (whether they are healthy or not) and to remove any dead or diseased trees.

Local governments are usually responsible for maintaining trees in the right-of-way, at least to the extent of preventing them from intruding into the power lines and public sewers. This is in spite of the fact that a right-of-way is only a type of easement on the owner's property.

Being a good neighbor requires a joint understanding of each party's rights and obligations regarding boundary line trees. Hopefully, this will create a cooperative approach to help solve any problems.