

## Damage Done to Trees: Consequences and Compensation



*My neighbor cut down trees on my property. What are my legal rights?*

Cutting down a tree on another's property without permission is trespass and carries a stiff penalty. A Minnesota statute provides that whoever *intentionally* cuts down a tree without the tree owner's permission can be assessed three times ("treble") the amount of monetary loss suffered by the tree owner.<sup>1</sup> If the tree damage is *unintentional*, then the tree owner's loss would not be

tripled. In one Minnesota court case, a driver had a heart attack while at the wheel and crashed into a grove of spruce trees. The driver was responsible for the cost of the damaged trees, but he was not ordered to pay three times the cost, because the damage was caused accidentally.<sup>2</sup>

*How will I be compensated for damaged or improperly removed trees?*

Try the direct approach first. Have a face-to-face discussion with your neighbor, the wrongdoer, and give him an opportunity to make an offer to compensate you for your loss. The reason to try to work it out is that when you have to consult experts is to avoid having to pay for lawyers, appraisers, and related legal costs. It may cost you more to prove the value of your trees than to recover your loss.

If you simply cannot come to terms with your neighbor, you will likely have to go to court. You can sue in Small Claims Court (called "Conciliation Court"), if your loss is \$7,500 or less. You should consult experts to establish the value of your tree or the decrease in your property value.

*How do I find experts?*

Start by calling a tree nursery or a tree-moving company (consult business directories). They can give you a value about the trees that they sell. If the tree diameter is greater than 3 inches, the nursery retailers will likely refer you to a tree appraiser. Professionals that appraise tree values or landscape damage usually charge \$75 to \$125 per hour for consultation time, driving time, and report-writing time.

*How is the dollar value of a tree determined?*

Tree-and landscape-appraisers use formulas to determine the dollar value of a tree. The factors that appraisers consider include the tree species, its size, its condition (health), its location/site, the tree's functional and aesthetic attributes, and its placement in the landscape (*e.g.*, a single, mature tree in a yard; a tree in a grove; or a tree under a power line).

*A construction contractor damaged or removed trees on my property. What are my legal rights?* The leading Minnesota court case on this subject involves a church whose road

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<sup>1</sup> Minn. Stat. §541.04

<sup>2</sup> *Pluntz v. Farmington Ford-Mercury, Inc.*, 470 N.W. 2d 892 (Minn. App. 1991).

contractor piled soil over the roots of some trees on church property.<sup>3</sup> The trees' roots were smothered, and the trees died. The church sued the contractor. The trees in this case were ornamental, provided shade, and acted as a screen and sound barrier to nearby highway traffic. The church was compensated for the "reasonable and practical replacement cost" of the destroyed trees. An expert calculated the value, which included the retail cost of the replacement trees, planting costs, and tax. The replacement planting of trees would, over time, approximate the previous condition of the church's site. If the trees had been small, ill-formed, and not particularly desirable as ornamental trees, their value would not be as great, and the way to determine the value of the loss would be the difference in the value of the real estate before and after the damage was done.<sup>4</sup>

*Am I entitled to punitive damages?*

No. You cannot collect both treble damages and punitive damages for trespass to your trees.<sup>5</sup> The purpose of punitive damages is to punish and deter conduct that is malicious or willfully indifferent to the rights of others.<sup>6</sup> Treble damages are the equivalent of punitive damages.

*Are there any criminal penalties?*

A person who intentionally cuts down another's tree without permission or damages property can be charged with criminal trespass or criminal damage to property.<sup>7</sup> A city attorney or county attorney determines if criminal charges are warranted, and if so, prosecutes the case. The wrongdoer, if convicted, faces penalties ranging from paying a fine to imprisonment, depending on the value of the property destroyed.

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<sup>3</sup> *Rector v. McCrossan*, 235 N.W.2d 609 (1975)

<sup>4</sup> *Baillon v. Carl Bolander & Sons Co.* 235 N.W.2d 613 (1975),

<sup>5</sup> *Johnson v. Jensen*, 446 N.W.2d 664, 666 (Minn. 1989)

<sup>6</sup> Minn. Stat. §549.20

<sup>7</sup> Minn. Stat. §609.605, subd. 1(b)(5) and Minn. Stat. §609.595