

## Hazard Trees and Limbs on Private Property



*What is a “hazard tree?”*

A hazard tree is a tree with a defect, plus a target. An example is a rotten tree (a hazard) by a picnic table (the target).

*How can I identify a hazard tree?*

Examples of obvious defects include a dead tree limb, the unseasonable lack of leaves, visible decay, a hole or crack in the trunk, or a tree leaning dangerously to one side.<sup>1</sup> Trees with obvious defects can become problems, because they can fail and cause property damage or human injury.

*Who is responsible for damage caused by a hazard tree?*

A tree owner is generally responsible for damage caused by a hazard tree. A tree owner is not expected to be a tree expert, but s/he is expected to recognize obvious symptoms of a problem. The reason for concern is that pre-existing defects can predispose a tree to failure. However, some defects are not obvious to the non-expert. If the defect is *not* obvious, the tree owner probably will not be held responsible if the tree fails.



If your neighbor’s tree falls and injures you or your property, your neighbor is responsible for the damage done IF the tree defect was obvious and the neighbor failed to correct the problem. However, if the tree defect was not evident, then your neighbor will likely not be responsible for the damage. The reason is that your neighbor cannot be held legally responsible for a problem of which he had no notice or opportunity to fix. If there is a question about the tree’s condition, consult a tree-care expert. Look for a “certified arborist” in the Yellow Pages under “tree companies.” Some communities hire tree inspectors who are trained to identify hazard trees and diseased trees in both public spaces and private yards.

*What can I do if I disagree with a tree inspector about the condition of my tree?*

If a tree inspector or housing inspector has condemned your tree as a hazard tree or diseased, you can ask the inspector to identify the defect and explain why it is a hazard. If you disagree, contact a certified arborist and get a second opinion. If the arborist agrees that the tree inspector made an error about your tree’s condition, give the tree inspector a copy of your arborist’s written opinion. In the case of diseased trees, a lab test can be done to confirm the presence of a disease.

*What should I do if my neighbor doesn’t deal with a hazard tree that threatens my property?*

<sup>1</sup> For photographic examples of hazard trees, please see the U.S.D.A. Forest Service’s Hazard Tree web page: <http://www.na.fs.fed.us/spfo/hazard/index.htm>.

Talk to your neighbor! Ask her to view the situation as you see it from your side of the boundary line. Ask her to fix the problem. You're putting the neighbor on notice that a defect exists. Write a letter to your neighbor, describing the problem (make sure that you keep a copy). Document the problem with photos. Consult a tree-care expert, an arborist. Try mediation. As a last resort, you can sue. Small-claims court deals with claimed losses up to \$7,500.

*Can I go onto my neighbor's property to cut down a hazard tree or limb?*

No! Cutting down a tree on another person's property without permission is trespass and carries a stiff penalty. In Minnesota, whoever intentionally cuts down a tree without the owner's permission can be assessed three times ("treble") the amount of monetary loss suffered by the tree owner.<sup>2</sup> *Tip:* Don't engage in stealth tree-cutting when your neighbor has gone on vacation. You're setting yourself up to pay three times your neighbor's loss.

*Who is responsible for cleaning up fallen branches or a fallen tree?*

If your neighbor's tree or branches have fallen into your yard, they have become a nuisance<sup>3</sup>, preventing you from the comfortable use and enjoyment of your property. Your neighbor has an obligation to "abate" or remove the nuisance, regardless of whether your neighbor knew that his/her tree had an obvious defect.

*When can my neighbor claim that the tree failed because of an act of God?*

An act of God is a force of nature that is both the sole cause of damage and unexpected or unforeseeable. For example, a tree downed by lightning is an act of God, if lightning is the sole cause of the tree's falling and if the tree did not already have an obvious defect. Your neighbor is not responsible if the tree's failure is solely caused by act of God. However, if the tree had an obvious defect before the tree fell during a windstorm, then the "act of God" defense will not shield your neighbor from responsibility.

*What role does insurance play?*

Bear in mind that insurance is a contract between you and your insurance company. Your insurance company can issue you a check, but cannot give you legal advice about your liability with respect to your neighbor. If your neighbor sues you, YOU are the one in court, not your insurance company. Talk to a lawyer about your legal responsibilities, not your insurance agent.

There are two basic types of insurance: casualty-loss insurance and liability insurance. Casualty insurance covers the loss you have suffered from fire, theft, hail, vandalism, and other calamities. It is often subject to a cap, such as \$500 for removal of tree debris. Liability insurance covers a loss suffered by someone else, for which you can be held legally responsible. For example, if someone slips on your icy steps and breaks his neck, your insurance policy provides coverage.

*Where should I go to seek legal help, if needed or if the neighborly approach doesn't work?*

Look in the Yellow Pages under "Attorneys/Real Estate or Real Property Law." Also, look in the Gray Pages of the phone directory for Lawyer Referral and Information Service. This service's attorneys often provide a half-hour free consultation to people referred to them.

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<sup>2</sup> Minn. Stat. §561.04

<sup>3</sup> "Anything which is ...an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance." Minnesota Statute §561.01