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## WHO IS RESPONSIBLE FOR TREE DAMAGE?

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High winds and heavy rains have caused numerous trees and branches to fall, often onto adjacent properties. The question arises: Who is responsible to clean up the damage? The answer is complicated and varied dependent upon a number of facts.

1. **Who Owns the Tree?** Tree ownership is based upon where the trunk is situated. If it's on the property line, it is deemed to be owned by the owners of both properties.

**2. Is the Tree's Owner liable for any Damage?** Not necessarily. It is the duty of every property owner to maintain their property, including trees, in a safe and hazard free condition. The owner of the tree may be responsible for damage caused to a neighbor's property but only if it can be found that the tree's owner failed to properly maintain the tree. Generally such failure is considered to be "negligence" and a negligence owner can be liable for all damage resulting from such negligence. However, in general the damaged party still must prove that the owner was negligent... most often failure to properly maintain the tree. For example, was the tree dead or dying from an insect infestation? Or did the owner trim the tree on his side only and thus render the tree unstable? If the tree's owner failed to act "reasonably" in periodically inspecting and maintaining his trees, he may be held liable for subsequent damage to others.

**3. What about an "Act of God"?** An Act of God is an unforeseeable event, ie: heavy storms, wind, lightning, that causes trees or limbs to fall down. We commonly see this term as an exclusion from insurance policy coverage. However, an act of God is not always a successful defense from liability particularly if there has been personal injury or significant property damage. Courts may often find sufficient evidence that the tree's owner was somehow negligent and thus provide recourse for the injured party. Such a finding will typically pull in insurance coverage.

**4. What about branches and debris that falls into the adjacent property?** Property owners are often upset when a neighbor's trees drop leaves, or fruit, or branches, or even limbs onto their property. But, absent some physical damage, California law does not provide any relief for the offended neighbor – unless they can prove the tree was improperly maintained. For branches and debris, the cost of legal action can easily exceed the cost of clean-up. So while the neighbor cannot force the tree's owner to clean up or pay for the mess, a co-operative approach may serve to maintain the relationship.

**5. Can a property owner use "self-help" to stop damage from a neighbor's trees?** As mentioned in prior Articles, California law is clear that a neighbor has to act "reasonably" in trying to stop actual or potential damage from a neighbor's trees. If the tree is causing actual damage such as roots uplifting a deck or branches pushing down a fence, the owner can be held liable for "nuisance", that is allowing his use of his property to damage the property of another.

Simply cutting off encroaching tree roots or branches could actually kill the tree or render it unstable and dangerous thus exposing the cutter to substantial legal liability for all damage including replacement of the damaged tree. No such action should be undertaken without first seeking to get the tree's owner to remedy the problem. If they refuse, then the neighbor should engage the services of a licensed arborist to trim the roots and branches in such a way as to reduce the property damage while not injuring the tree. If this cannot be done, then the neighbor should bring a legal action against the tree's owner for nuisance which could compel him to trim or even remove the tree and repair any damage.

6. **Must a Seller disclose an offending tree?** If a person is selling a home and there is any history of problems with adjacent trees, this should always be disclosed even if there has been no actual physical damage. Giant oak trees can provide great shade and color but the leaves can go everywhere creating a clean-up mess. The rule should always be: if the Seller thinks that this has been an issue, they can be reasonably certain that their buyer may feel the same. Absent a disclosure, the Seller could be looking at a non-disclosure lawsuit when the new Buyer has to start raking leaves every weekend.

For over 20 years, the attorneys of BPE Law Group, P.C. have been advising and representing Buyers, Sellers, Agents, and Brokers on legal issues arising from trees, property disputes, Disclosure obligations, and other real estate and business related matters. Check us out on the Web at: [www.bpelaw.com](http://www.bpelaw.com). (<http://www.bpelaw.com>.) If you would like a consultation with us, please call our office at (916) 966-2260 or e-mail Steve Beede at [sjbeede@bpelaw.com](mailto:sjbeede@bpelaw.com) (<mailto:sjbeede@bpelaw.com>).

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