Boundary Trees and the Law

By Lorrie Stromme

At the 2004 Minnesota Shade Tree Short Course, I had lots of questions from arborists and city foresters about boundary trees and the laws in Minnesota that govern them. This article will attempt to answer your questions, including what a boundary tree is and what you can ... and can't ... do to stay on the right side of the law. Even if you choose to read no further, remember this: sharpen up your people skills, because as Bob Slater (MnDOT forester) wryly observes, "There aren't many tree problems ...they're really people problems." Bob has correctly discerned that people often differ about the same tree: one person considers it a source of shade and beauty, while another regards it as just a messy thing that drops sticks and leaves in his gutters or blocks his view.

> "The tree which moves some to tears of joy is... in the eyes of others... only a green thing that stands in the way."
>
> – William Blake, 1799

Before getting to the nitty-gritty of the law on boundary trees, let's clarify:

What is a boundary tree? Courts sometimes use a more complex definition, but for most purposes, a boundary tree is one that is either planted on the boundary line between two lots, or a tree whose branches, trunk, or roots have crossed a boundary.

Who owns the boundary tree? Generally, the location of the trunk determines who owns the tree. A tree trunk that stands solely in your yard is your tree. As the tree owner, you can decide to coddle your tree or cut it down, even if your neighbor protests that removing your tree will expose his once-shaded patio to the blazing sun. Tensions mount when a boundary tree becomes a nuisance on one side of the boundary and not the other.

What is a nuisance tree? A Minnesota statute defines a nuisance as follows: "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." Branches that rub against the neighbor's roof or tree roots that push up a sidewalk are considered a nuisance. What about a tree whose trunk is on your neighbor's property but leans far into your yard and prevents your use of a corner of your lot? Well, if that tree interferes with the free use of your own property, it has become a nuisance.

What can you do when a boundary tree has become a nuisance?
Here are the do's and don't's of legally "abating" the nuisance:

- Prune overhanging branches up to the boundary line–at your own expense (see "Self-help" below);
- Prune, but don't harm or destroy the tree. Don't take off too much of the canopy, so as to jeopardize the tree's capacity to photosynthesize. Don't cut so many of the roots that the tree may become unstable. Don't prune an oak during the high-risk period of April to July (or to September, to be on the safe side). It doesn't matter if the tree looks funny after the pruning. The courts look at whether or not the pruning will harm the tree. If you don't know what may harm a tree, consult a tree expert before cutting.
- Don't trespass onto your neighbor's property to trim a tree or shrub. And technically, that means don't even lean over the property line to make the pruning cut, unless you have your neighbor's consent.

- Don't cut down a tree whose trunk is on the boundary line, unless you have the express consent of the owner on the other side of the boundary line. (See "Treble damages" below.)

Using "self-help"

Property owners in every state have the right to use self-help to prune branches or roots of a neighbor's tree that encroach onto their property. The rationale is that self-help prevents the wasteful use of the judicial system to resolve comparatively minor disputes. It's a trade-off: you have the right to prune and remove the invading branches from your neighbor's tree, right away, at your own expense (i.e., use self help), instead of having to hire a lawyer, start a lawsuit, and wait for the courts to sort it out. It saves you time and money, and keeps the courts from having to settle disputes between neighbors. In Minnesota, you have the option of using self-help OR going to court, when self-help is not practical or reasonable. In most other states, self-help is the exclusive remedy.

Is tree debris considered a nuisance?

No. The courts have basically said, "Leaves happen." Healthy trees drop debris, like acorns, sap, leaves, and twigs. While there is no Minnesota court case directly on point, courts in other states have recognized that the natural growth of trees includes shade, roots, leaves, and overhanging boughs, and that liability is imposed when there is "sensible" damage," not mere debris. Going to court to have a neighbor ordered to pick up fallen debris is not practical or economical.

Treble damages for wrongful tree cutting.

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 owner's permission can be assessed three times ("treble") the amount of damages awarded in court.

How do you determine the boundary line?

In light of the possibility of having to pay treble damages for tree trespass, an arborist should make sure that s/he knows where the boundary line is before cutting down a tree. A survey is the sure way to know where a boundary line is, assuming that you can locate the survey markers. If you are adept at reading legal descriptions in deeds and plats, you have an advantage, assuming that you have access to the deeds and time to search public property records for the information you need. So, what is an arborist to do when a client wants a tree removed that is on or near a boundary line? Here's where your people skills come in. Ask the neighbors on both sides of the line where they regard the property line to be before you start cutting. And you most certainly should do that if the tree trunk is partly on the land of two or more people, because the consent of all property owners is needed before a true boundary-line tree can be cut down. And don't feel that you can hide behind your contract with your client to escape the treble damages. A lawyer is likely to sue both your client AND you in a treble damages suit for trespass.

What about trees that fail and cause damage or injury?

The trend across the country is to hold tree owners legally responsible for damage caused by their unsound trees. The test is whether the tree owner knew or should have known that damage was likely. A tree owner is not expected to be a tree expert, but s/he is expected to recognize obvious symptoms of a problem, such as visible decay, stem cracks, a dead limb, a trunk with a dangerous lean. These types of defects put the tree owner on notice that it is foreseeable that the tree will fail. If the tree owner fails to take corrective action, the courts will likely hold the owner legally responsible for damage caused to people or property. On the other hand, if the defect was not obvious or readily discernible, then the tree owner will likely not be held responsible for damage when the tree fails.

Arborists: take heed. If you recognize a defect while servicing your client's trees, tell her about

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it. Make a written note in your files of the defect and your recommendation for corrective action, especially if your client chooses not to follow your advice. You are making a paper trail. If the tree later fails, you will have documentation to protect your good name.

What about the "act of God" defense?

A frequently heard excuse is the damage caused by a fallen tree was an act of God. Cross that defense off your list! Not every tree that falls in a strong wind is the result of an act of God. To qualify as an act of God, all of the following elements are needed: 1) the accident must have happened from a force of nature that was both unexpected and unforeseeable; 2) the force must have been the sole cause of the accident; and 3) the accident could not have been prevented by using reasonable care. For example, a visibly decayed tree that is hit by lightning and falls on the neighbor's garage did not fail because of an act of God, because lightning was not the sole cause of the accident. The tree had visible decay, and if the tree owner had taken corrective action, the tree might not have fallen when hit by lightning.

What if the owner of a defective tree won't address the problem?

Talk to the tree owner! Tell him about the problem and ask him to fix it, because failing to do so could result in damage to yourself or your property. You are putting the tree owner on notice, so that he can't claim ignorance when the tree fails. Consult an arborist for an independent assessment of the problem. Try mediation, where a neutral third party listens to both sides of a problem and encourages the opposing parties to find a mutually acceptable solution. Mediation is successful over 85% of the time, and it saves time, money, and neighborly relations. As a last resort, go to court, but bear in mind Ambrose Bierce's description of a lawsuit: "You go in as a pig, and you come out a sausage."

Okay, so does this mean that I should go to charm school?

No. An ounce of prevention and open lines of communication can go a long way toward both preventing and resolving disputes about boundary trees. Use your people skills, whether you're a neighbor or an arborist dealing with a client.

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MnSTAC 2004 Award Winners

Outstanding Partnership Award

Midtown Community Works Partnership
For greening the 29th street corridor with hundreds of trees.

Innovation Award

Minneapolis Park & Recreation Board and Tree Trust
For creating the video "You've Got a New Neighbor" to accompany newly planted boulevard trees.

Outstanding Volunteer Award

Bryn Mawr Neighborhood Association
For making the Bryn Mawr Landscape Partnership project a phenomenal success.

Media Award

Great River Energy Minnesota Power
For *The Right Tree* brochure

Outstanding Youth Award

Pa Cha Yang
For ongoing primary research relating to the allelopathic effects of common buckthorn

Outstanding Arbor Day

Minneapolis Park & Recreation Board
with Tree Trust,
Committee on Urban Environment, "Friends of the Cemetery,"
Corcoran Neighborhood,
The Phillips Community,
Green Space Partners,
Riverside Park Area Residents,
Eagle Scout Troop 123, and
Folwell Neighborhood Association
For yet another year of unbeatable Arbor Day Celebrations at Pioneer & Soldiers Memorial Cemetery, Folwell Park and Riverside Park