

## Nuisance Trees: Encroaching Branches and Tree Roots



*Tensions mount when a boundary tree becomes a nuisance to a neighbor on one side of the boundary and not the other. The best advice is to try to work out the problem in a neighborly way, instead of taking your case to court. This fact sheet answers some of the most common legal questions about trees that have become a nuisance, based on the law in Minnesota. Watch for “Tips” as you read.*

### *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.”<sup>1</sup> In the context of neighbors and their trees, the branches from your neighbor’s tree that rub against your roof or the roots that push up your sidewalk are considered a nuisance. What about your neighbor’s tree that leans far into your yard and prevents your use of a corner of your yard? If that tree interferes with the free use and enjoyment of your own property, then the tree has become a nuisance.

### *What is a boundary tree?*

Courts sometimes use a more complex definition,<sup>2</sup> 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 a 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 protest that removing your tree will expose his once-shaded patio to the blazing sun. *Tip:* If you and your neighbor are co-owners of a true boundary-line tree, then you cannot cut down the tree without your neighbor’s consent, and vice-versa. You and your neighbor share the tree-care expenses and responsibilities equally.

### *How do I determine where the boundary line is?*

A survey is the best way to determine the boundary lines of a lot. Look for surveyor stakes or boundary markers. A plat map and legal descriptions help, too. Often neighbors know where the boundary is between their lots. *Tip:* Talk to your neighbor, if you have any doubt about the location of the boundary line.

### *What can I do if the roots or branches from my neighbor’s tree encroach into my yard?*

If the roots or branches have encroached into your yard and become a nuisance, you have the right to fix or “abate” the nuisance, but there are limits. Here are some guidelines:

- Trim overhanging branches up to the boundary line – at your own expense. This right is called “self-help.” [See “What is self-help?” below]
- Trim, but don’t harm the health of the tree or destroy it. For example, cutting off too much of the canopy could jeopardize the tree’s capacity to photosynthesize. Cutting too much of the root system could cause the tree to become unstable and topple over. And pruning an oak between April and September could make the tree vulnerable to oak wilt, a fatal disease. It doesn’t matter that the tree may look funny after trimming it. The

<sup>1</sup> Minn. Stat. §561.01

<sup>2</sup> See, e.g., *Holmberg v. Bergin*, 285 Minn. 250, 172 N.W.2d 739 (1969).

courts look at whether or not you are harming the tree's health. If you don't know what may harm a tree, consult a tree expert before cutting.

- To find a tree expert or 'arborist,' look in the Yellow Pages under 'tree service,' look for the arborist's membership in professional organizations, such as the Minnesota Society of Arboriculture (MSA), the International Society of Arboriculture (ISA), or the National Arborist Association (NAA) .
- 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 the 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.
- *Tip:* Chat before you chop. Even though you are not legally obligated to do so, talk to your neighbor before you do major trimming on your neighbor's tree. It's the neighborly thing to do.

### *What is self-help?*

Property owners in every state have the right to trim the branches or roots of a neighbor's tree that encroach onto their property, up to the property line, at their own expense. This right is called "self-help." Self-help is an alternative to going to court. The rationale is that self-help prevents the wasteful use of the court system to resolve comparatively minor disputes. It's a trade-off: you have the right to cut and remove the encroaching branches or roots of 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. Using self-help saves you time and money, and keeps the courts from settling disputes between neighbors. In Minnesota, you have the option of using self-help OR going to court, when using self-help is not practical or reasonable. In most other states, self-help is the exclusive remedy.

### *What are the consequences of trespassing to cut down my neighbor's tree?*

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>3</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.

### *What can I do about leaves, twigs, sap, fruit, and other debris from my neighbor's tree?*

Leaves, twigs, sap, acorns, etc., are naturally occurring tree debris and do not generally constitute a nuisance. There are no court cases in Minnesota that directly deal with this issue. However, courts in other states have recognized that tree owners are liable for "sensible damage" caused by their trees, such as a damaged roof, but not mere debris from a healthy tree. Going to court to have a neighbor ordered to pick up fallen debris is not practical or economical.

### *Who owns the fruit on the branches of my neighbor's tree that hang into my yard?*

The rule of thumb is that the fruit on the overhanging branches belongs to the tree owner. Picking the fruit may not be so simple. Ownership of the fruit does not give your neighbor any right to trespass onto your property to pick the fruit. The law in Minnesota on this subject is not clear cut. Courts would probably weigh your right to keep trespassers out of your yard against the owner's right to harvest the fruit. The balance may tip in favor of your neighbor, if she owns an orchard and depends on the fruit for her livelihood. The law is also unclear on the issue of

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<sup>3</sup> Minn. Stat. §561.04

fallen fruit. Once it has fallen, the fruit's value diminishes. It has become, for all practical purposes, "tree debris." You should be able to use or dispose of the fruit, if your neighbor says nothing about wanting it.

*Help! My neighbor cut down her tree ... and took the shade in my back yard with it. What recourse do I have?* None. If the tree trunk was in your neighbor's yard, it's her tree. She has the right to cut it down, even for the heck of it, and even if doing so exposes your prize-winning hosta garden to all-day sun.

*What is the best way to resolve disputes about trees between neighbors?*  
The best approach is to try to work out the dispute with your neighbor.

*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.

*Disclaimer:* The information included in this fact sheet is intended to be educational, not legal advice. If you have a legal problem and require legal advice, you should consult a lawyer.