

# Tree Liability Issues

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If you own a home on a lot with large mature trees, it would be wise to give some thought to the health of your trees and whether they present any threat to persons or property which may result in a liability risk to you. This includes threats not only on your own property, but also to adjacent properties or public rights-of-way. To limit your personal liability, not only do you need to keep your trees healthy, but you have a duty under the law to manage them so they do not create or constitute a hazard to the public.

Traditionally, assigning liability for property damage or injuries caused by trees has depended on whether or not the accident was considered the result of an “Act of God” or from an act of “Negligence.” To avoid the charge of negligence, one must simply be reasonable. Simply stated, when a tree fails and results in property damage, personal injury, or death, the law looks to see if a reasonable person, acting with reasonable care, knew or should have known that a tree on his or her property had visible, apparent, and patent signs of internal decay, disease, or structural defect and could fall (or fail structurally). If so, then the landowner has a duty to exercise reasonable care to protect the public from danger. A reasonable person is not charged, however, with the knowledge or understanding of an expert trained in the inspection, care and maintenance of trees. The only duty imposed upon the landowner is to act reasonably.

In other words, if the problem with the tree was not one a “Layman” could reasonably be expected to be aware of, then the assumption was usually that the event was an “Act of God.” However, if the tree had obvious and observable defects that the owner had ignored, or the owner had done something to knowingly or carelessly render the tree unsafe, then liability could be assigned based on the owner’s negligence. This has not changed. But now, due to recent court rulings, the liability exposure of residential landowners with trees on the property has been significantly clarified as to the conditions on private

property that may protrude into the public right-of-way, even though the trees may be quite sound and healthy.

For example, in the past, it was standard procedure for the owner of public streets, roads, highways and utility easements to be the responsible party for maintaining proper tree and sight clearances on the rights-of-way, including maintenance of interfering limbs originating from trees on adjacent properties owned by private individuals. While that responsibility may continue to exist depending on the circumstances, now, should one of your tree limbs be the cause of damage to a vehicle or its passengers, as a result of protruding or falling into the public right-of-way, you may well be held liable and responsible for failing to have acted reasonably in the maintenance of your residential land.

So what do you do to protect yourself from a tree related liability claim? There are several basic requirements that go beyond the two most common maintenance practices of watering and fertilizing. They may include, but are not limited to:

- Having a “documented inspection program” of your trees designed to identify any structural problems of the crown, trunk or roots. The “inspection” requirement may be a simple “Drive By” or “Walk Through” observation of the property. If no compromised trees are noted, simply making a note of the time and date you checked on your trees may be sufficient for “documentation.” If, however, defective trees are noted or something looks suspicious, then a more thorough review should be performed by a qualified person and the results noted.
- Removing hazardous weak trees or limbs noted in your inspection, or if possible correcting these deficiencies with appropriate structural remedies such as cabling.
- Pruning or removing limbs identified as diseased, dying, or dead to promote safety and the health of the tree. Weak limbs that cannot be corrected by pruning or cabling should be removed.
- Pruning or removing interfering or objectionable limbs that fail to provide safe sight distances and adequate

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vehicular clearances, limbs which may constitute a threat to vehicles or persons on public rights-of-way adjacent to your property.

While most people can maintain and avoid damaging the observable portion of the tree above ground, what about maintaining and protecting the hidden tree roots under the ground that you can't see, roots that keep the tree alive and anchor it structurally? Most trees in our Florida soils have a root zone that extends outward two to three times the height of the tree, generally growing in the top two feet of the soil (which is where the roots can find nutrients and oxygen). Obviously a root zone this close to the surface is very susceptible to damage from many common site improvements. Damage from construction operations such as homebuilding, installing irrigation, trenching for utilities, site grading, and many other operations can all cause root damage which may put your trees or trees on adjacent property at risk and make them unsafe.

So what should you do, or not do, in order to preserve and protect tree roots in a healthy and safe manner?

- First, when planning site activities that could damage or destroy a tree's roots, determine the tree's "Critical Root Zone" and protect it with a fenced barricade.
- Some municipalities have tree protection standards which define this area as "one foot of radius, from the tree's trunk, for each one inch of trunk diameter" (measured at four and one-half feet above the ground). This is the minimum "Critical" area as the more undisturbed root area you can protect, the better the chance of survival and structural anchoring. It is important to check your own local ordinances to be in compliance.
- Avoid "Root Raking" as a site clearing procedure whenever possible. "Root Raking" is just that: raking, or ripping the tree's roots out of the ground, often right up to the trunk of the tree causing major damage that can result in structural instability, decline, or death of the tree.
- Tunnel under the root zone rather than trenching through it. Even shallow trenches can cause major damage to large roots just under the surface, roots which provide structural support, water, and nutrients to the tree.
- Avoid chemical spills, including paints, solvents, and alkaline concrete tailing washed from cement mixers in the tree's root zone.

- Monitor soil moisture levels. Remember though, too much water can force air out of the soil and can "drown" your tree.
- Mulching two to three inches on top of the affected root zone will help to retain soil moisture.
- Placing soil fill or pavement over root zones can also suffocate your trees' roots by not allowing the soil to rid itself of excess carbon dioxide, a by-product of tree root respiration.
- Avoid soil compaction of the root zone. Storing fill dirt, vehicular driving and parking, heavy construction equipment, and the like can compact the soil to the extent that air and water may become unavailable to the roots for use by the tree. Even two or three trips with a loaded pickup truck can compact soil and crush roots to the point of causing root loss, tree decline, or even eventual death. [Figure 1.]

Finally, if the above suggestions seem beyond your ability to personally work out a solution to keep your trees safe and healthy, your best advice is to call a professional "ISA" (International Society of Arboriculture) "Certified Arborist" to develop a "Tree Management Plan" to assist you in managing and maintaining your specimen trees. Your county may have an Extension Forester and he/she is also a good source for this type of information and assistance.

Remember, not only do properly maintained healthy trees add value to your property and enjoyment to your life, they benefit the entire community. They may also keep you out of the lawyers' food chain.



**Figure 1.** Soil compaction, probably caused by years of parking automobiles under the tree, resulted in root death and tree failure.