

Community Forestry Assistant



Northwest
Management, Inc.

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At the time, it seems like a good idea. What could be nicer than to delineate the boundary between two properties than to plant trees? Actually, it is a good idea because trees are generally more permanent than stakes or metal and they provide a host of environmental benefits. What is important is that the property owners understand that the boundary tree is a shared tree. Essentially, it is controlled by both parties and neither party is free to do with it as he wishes without permission of the other.

Here are some important guidelines established in most states by common law:

- If any part of the trunk of the tree is on both sides of the property line, it belongs to both owners.
- If Mr. Jones plants the tree entirely on his side of the line and as it grows in diameter it crosses the property line into Mr. Smith's yard, it belongs to both property owners.
- An owner generally "owns the air above a property line." This means if Mr. Jones plants a tree and its trunk is entirely on his property but a branch grows over the line into Mr. Smith's yard, Mr. Smith can legally cut off the limb at the property line. (Note: this kind of truncation is usually not the best way to prune a tree, so the best thing to do is to discuss the matter and helpfully suggest that Mr. Jones prune the limb properly at the junction with trunk or other large limb.)
- The person that owns the tree owns its products. So, even though Mr. Smith has the right to cut off an invading limb, Mr. Jones has the right to the wood if he wants it. In fact, it is his whether he wants it or not!



Roots are a bit more problematic than limbs and common law pertaining to roots may be actively evolving. In principle, courts seem to hold that roots that cross a boundary line can be severed by the invaded property owner. However, since this affects the health of the entire tree, a California court has diverted from tradition and ruled that such root cutting must be done "reasonably". In other words, if a root from Mr. Jones' tree is lifting Mr. Smith's walkway, the offending root can be severed. However, based on the California case, Mr. Smith would be unreasonable if he took a trencher and severed all of the tree's roots to a depth of say, 3 feet. This same opinion might apply if the offended property owner drenched the soil

with a tree-killing herbicide, even though he did it entirely on his side of the line. The lesson here is: remove roots only if you can articulate a good reason for being necessary and do the deed in the least destructive way.

The Affects of an Ordinance: A few little words can make a big difference in what happens to trees along a street right-of-way. A strong ordinance will protect such trees by declaring them the property of the city and will spell out what can or cannot be done with them. In some communities, the municipality will assume all responsibility for planting, pruning, and removal; in others the adjoining land-owner must shoulder these responsibilities and their costs, but must still receive city permission for some or all of these treatments. This type of ordinance needs to define what trees are considered in the right-of-way and therefore subject to the conditions of the ordinance.

This article has been excerpted and adapted from "Trees and the Law", Tree City USA Bulletin No. 49, published by the Arbor Day Foundation with Dr. James R. Fazio, Editor.

If you have questions about this newsletter or the Community Forestry Assistance Program, please contact Tera King with Northwest Management, Inc. at 208-883-4488 ext. 133.