



Branches, Roots, and Debris: What To Do When A Neighbor's Tree Strays



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You are baking a birthday cake and suddenly realize you are short about a cup of sugar. The reality hits. In the past, your neighbor happily supplied you with the missing ingredient, but now ... ever since the "tree-branch incident" you are no longer on speaking terms. The branches of your neighbor's old maple tree had expanded out and over your neighbor's property line and had begun to press against your garage in a rather menacing manner. You had approached your neighbor with your concerns, but the normally rational man had become quite agitated about the possibility of trimming the majestic tree and had refused to discuss the matter further. So, you took matters into your own hands and cut off the offending branch. Now, although your garage is safe, your once cordial relationship with your neighbor has soured. Was there a better way to have approached this situation? What were your rights?

Encroaching tree branches and roots, as well as falling debris, provide a common source of tension between neighbors that can be difficult to resolve. If the tree's encroachment presents merely an inconvenience, the neighbor being encroached upon will most likely be expected to trim away the branches or roots him or herself. If the damage caused by the tree is more severe (like cracked pipes from expanding roots), Colorado may grant the neighbor the right to sue the tree owner. However, before following the costly path to court, some alternatives exist that a neighbor may want to explore first. The following article outlines the various methods a property owner can attempt to solve the problem of an encroaching tree, as well as ways to broach the often emotional subject of tree trimming with your neighbor to avoid creating an antagonistic relationship.

First, you should determine whether trimming back the tree really needs to be your responsibility or whether another entity, such as the municipality, public service etc. has an interest in cutting back the offending tree parts. Cities are responsible for pruning trees located on or posing a threat to city property; so if the tree is on city property, a phone call (or two) to the correct city department may result in the tree being trimmed. To determine whether the tree stands on city property, visit city hall and consult a city map. Additionally, if the tree is on private property, the city may still decide to trim it if it endangers city property or poses a safety hazard (like blocking the view of an intersection). If the tree is in violation of a local ordinance, the city might order the owner to trim or remove it. The following are examples of situations typically governed by local ordinances:

- Trees that function as fences - Trees are considered natural fences when they are planted close together and are used to demarcate a boundary. Local fence laws may dictate the allowable height and location of fences on property.
- Trees that are prohibited by law or are taller than permitted - Some cities may have ordinances that list undesirable trees that are prohibited in the area. If the offending tree is a prohibited species, the tree owner may be ordered to remove it or it may be removed for her by the city.
- Diseased Trees - Most cities require tree owners to remove hazardous trees and tree branches.

A utility company or a homeowners' association may also provide relief for your encroaching tree problem. If there is utility use around the tree, the utility company will trim the tree to prevent damage to its equipment. If you live in a covenant controlled community, there may be a covenant that regulates the location, kind and height of trees allowed. If the tree violates any of these restrictions, your homeowners' association may take the steps necessary to enforce the community's regulations.



If your situation does not lend itself to any of these solutions, you then should take advantage of your right of self-help. In Colorado, property owners have the common law right to cut off branches and roots that cross over their property lines. Courts really don't want to take up valuable court time settling disputes between neighbors. The right to self-help encourages neighbors to solve their problems themselves. In Colorado, the neighbor who trims the tree is responsible for any expense associated with the trimming. Trimming back large and numerous branches can be expensive. Consider talking with your neighbor about splitting the cost.

The right to self-help has limitations, so be careful as to how you proceed. First, you may not enter onto the tree owner's land without permission and may only trim up to your property line. Additionally, if you hire a tree service, they too must seek the tree owner's permission before setting up ladders or equipment on his or her property. Second, you cannot take it upon yourself to cut down the entire tree or trim it in such a way that the tree is destroyed. This does not mean if the tree looks absurd after trimming, you have destroyed it in a legal sense (although your neighbor may have another opinion!) Legal authorities will consider a tree destroyed if your trimming has compromised its health, not if the tree is rendered less than aesthetically pleasing as a result of your efforts. Be careful. If you have substantially harmed the tree, you may be liable to the tree owner for money damages. Third, check with your city clerk's office before trimming because some cities require permits for trimming certain types of trees.

Perhaps the most important thing to do before embarking on the trimming of the tree is to approach your neighbor and discuss it with him or her first. This step could save you a lot of problems in the long run. First, the tree owner, realizing that the pruning is inevitable, may want to take over the job to ensure that the tree remains healthy and symmetrical. Second, it's polite. People can be very protective of their trees and will become very upset if one day they discover a chunk of tree missing. Explaining what you plan to do and why it is necessary may help to keep the peace.

If the tree owner still refuses to cooperate after being approached, it is advisable to compose a letter to your obstinate neighbor describing your situation and intentions. Explain again in writing why the tree needs to be trimmed and try to soothe the owner's fear for the tree's safety by telling the owner that you will be careful. If you plan to use a professional service, be sure to mention that as well. If your neighbor still refuses to cooperate, consider writing one final letter explaining the law in more detail. Since the right to trim another's tree when it encroaches on your land is a common law right, there are no statutes to reference. However, at this point, it may be well worth visiting an attorney to draft a letter for you on legal letterhead, which often commands more attention than personal stationary.

Although some states will allow a property owner to sue if the neighbor's tree has caused substantial damage, the general rule remains that the property owner's most feasible solution is self-help. The Colorado appellate courts have not yet issued an opinion on the question of whether or not a neighbor can sue the owner of a healthy tree. If all else has failed and you are determined to try to sue, the damage caused by the encroaching branches or roots will have to be serious. If you are looking for a court order directing your neighbor to trim back the tree, the suit must be brought in district court and you should hire a lawyer. However, if you are looking for compensatory money damages under \$7,500, the suit can be brought in small claims court. Before hauling your neighbor into court, write a demand letter explaining the damages and the law. A small claims court judge will want to see that such a letter has been sent and maybe explaining the law to your neighbor will sway him or her to pay you for your damages. In that case, you will be able to avoid the courtroom altogether! Be prepared to prove the following: 1) the person you are suing owns the tree; 2) its branches or roots have crept over the property line (photographs showing the tree branches extending into your property are the best proof); 3) you have notified the tree owner in writing of the problem; and 4) what damage the tree has caused.



With all that said and done, the best solution remains trying to compromise with your neighbor. Consider mediation. Mediation has brought about settlements in situations which at first glance appeared to have no amicable solution. By keeping the lines of communication open with your neighbor, hopefully you can get the tree trimmed while keeping sugar-borrowing privileges.