

Don't Trip Over Georgia Tree Liability

🏠🏠🏠 By: George E. Nowack, Jr.

The Three-Step Tree Test and Frequently Asked Questions

If a tree falls on your property, who do you think is responsible for resulting damage or injury? Who do you think is responsible for removing a fallen tree? The answer under Georgia law is not always clear-cut. Tree liability in Georgia depends on three factors: (1) who owns the tree (2) why the tree fell and (3) whether the landowner knew or should have known that the tree was unsafe. Although these three questions may sound simple, definitive answers are often tricky to determine. If your community is facing issues with fallen trees, consider the three-step tree test with frequently asked questions to help determine tree liability.



Frequently Asked Tree Questions

Are lot owners in community associations obligated to inspect trees on their property line to determine if the trees have visible signs of death, disease, or rot?

Yes. Georgia law is well established that urban landowners have the obligation to inspect trees along their property line. Property owners must inspect the trees for visible, apparent, and patent decay and tree rot. Generally, there is no duty to consistently and constantly check all trees for non-visible rot, nor is there a requirement that a professional conduct the inspection.

Who can determine if a tree is dangerous?

While Georgia law does not obligate property owners to obtain professional opinions about the health of their trees, if an owner is unable to determine a tree's health or wishes to further investigate its health, an arborist or professional landscaper may make a determination about the health of a tree or likelihood of it falling.

When is a lot owner liable for damage or injury caused by a tree?

Property owners in Georgia are liable for injuries to a person or damage to property caused by their tree only if they knew or reasonably should have known that the tree was diseased, decayed, or otherwise constituted a dangerous condition and the owner failed to take reasonable steps to remove the tree or remedy the danger prior to the injury and/or damage. In other words, in order for an owner to be liable for injury or damage resulting from the owner's tree, the owner must be negligent. In the context of tree care, this means that property owners must take measures that a "reasonable person" or "average citizen" would take to care for their trees.

Who is responsible when an apparently healthy tree falls over a property line due to a severe storm, heavy wind or other act of God?

Because the fall could not be foreseen by a “reasonable person,” the general rule in Georgia is that the tree owner is not negligent when this happens, and, therefore, is not liable for either property damage or injuries to someone. However, responsibility for cleanup of the tree under these circumstances is not yet settled under Georgia law. The case law indicates that the liability to cleanup and remove the tree stops at the property line and a lot owner is not responsible for removing any of the tree from an adjacent lot.

Who is responsible for a tree whose trunk crosses the property line of two adjacent lots?

Under Georgia law, the owners of both lots have an interest in the tree and they are both responsible for the tree. Any property owner on whose land any part of the tree trunk stands owns the part of the tree located on his or her lot. Also, each owner has an easement of support from the adjacent owner and has the right to demand that the other owner use his or her part of the tree so as not to unreasonably injure or destroy the whole tree.

Three-Step Tree Test

In order to establish liability for a fallen tree, you must determine these three things:

(1) Who owns the tree?

In Georgia, ownership is based on where the trunk of the tree lies. The landowner with the trunk of the tree on his or her property is deemed the owner of the tree.

(2) Why did the tree fall?

Did the tree fall because it was dead, decayed, or diseased? Or, did an “act of God” cause a healthy tree to come down unexpectedly? Sometimes, the cause of a fallen tree may not be easy to determine, in which case, an arborist or other tree expert may be needed to render an opinion on the reason for the fall.

(3) Did the owner know or should have known that the tree was unsafe?

In the case of a fallen dead or decayed tree, you must determine whether the owner knew or should have known that the tree was unsafe.