

DEAR READERS: Do you have a legal question that has been burning on your mind (but are hesitant to ask an attorney...cha-ching; cha-ching)? If so, please send your questions to Debra A. Newby via email (contact information below). Your name will remain confidential. Although every inquiry may not be published, we will publish as many as possible. Finally, this Q & A Legal Column is intended as a community service to discuss general legal principles and does not create an attorney-client relationship.

Q: A tree in my yard seems to be a bit “side-heavy” and is leaning toward my neighbor’s house. I was wondering whether I should take some action...or if I don’t, whether I will be responsible if the tree falls during a winter storm and crashes into their home?

Signed: Watchful Eye in Sebastopol

Dear Watchful Eye: The short answer...”Yes”...and “Yes”. Plus, you get an A+ for timing—great question, especially in light of the rainy season being upon us. Now is the time for all readers to give a “health check” to all the plant life that supports us.

First, the basics. If a tree falls and causes damage to real property, the best course is for the owner of the damaged property to file a claim through their own homeowner’s policy. Rephrased, for purposes of getting the fallen tree off the home or fence, it doesn’t matter whose tree it is. The easiest course of action is for the owner of the damaged property to file an insurance claim ASAP. Homeowner’s have a duty to mitigate damages by preventing further damage.

If the tree was rotten, leaning, or in apparent need of trimming or removal, then the insurance company who paid the claim will argue that the tree owner was “negligent”, and in turn will try to recover whatever monies are paid out. This is called **subrogation**. Insurance companies have entire “swat squads” of subrogation specialist who try to recoup whatever monies are paid out when someone else was at fault. They are relentless, even without their flying jetpacks and colorful helmets.

So, if your tree was noticeably neglected and it falls, causing damage, someone will be knocking on your door soon...and they will insist that you pay for the damage, either out of your own pocket, or out of your insurance company’s pocket. Be warned: claims may affect your premium at renewal.

Next, you should also understand that not all property is covered. Typically, if a tree falls, only damaged **real property** is covered. This means if the tree crashed through a home, fence, patio, deck, swing set, or the household’s bicycles, the damage is covered. However, if the tree causes damage to the land, such as landscaping or exotic plants, no moola for anyone--resulting in one teed-off neighbor. The neighbor still may be emotional and attached to the damaged property as “irreplaceable”, even if the damage is covered by insurance.

Finally, if there is insurance coverage for the fallen tree, the adjuster will likely adjudicate the claim in three phases: 1) evaluation of how much it costs to remove the tree and repair the damage to real property; 2) how much it cost to remove the debris; and 3) the value of the tree itself in certain conditions (typically, no coverage for the **tree** due to wind and hail damage).

Bottom line...we should all be good neighbors like you and me and inquire whether our surrounding trees need attention. Before a mishap occurs you can and should take key steps: i) Inspect your trees and the surrounding property; ii) Retain the services of a respected arborist, if necessary, so that the sleeping giants remain healthy and vibrant; and iii) If the tree is near or on the property line, initiate discussion with your neighbor and reach an agreement on fairly splitting the costs of the arborist and whatever work is necessary for the health of the tree and the surrounding area.

Nature renews the spirit and is a key aspect of our existence. We are inextricably intertwined ...she needs to be respected and preserved. As Alexander Pope, the 18th Century English poet, elegantly intoned:

All are but parts of one stupendous whole,
Whose body Nature is, and God the soul.

Debra A. Newby is a resident of Monte Rio and has practiced law for 27 years. She is a member of the California, Texas and Sonoma County Bar Associations and currently maintains an active law office in Santa Rosa. Her law practice emphasizes personal injury law (bicycle/motorcycle/motor vehicle accidents, dog bites, trip and falls, etc.) and expungements (clearing criminal records). Debra can be reached via email (debra@newbylawoffice.com), phone (707-526-7200), fax (526-7202) or pony express (930 Mendocino Avenue, Suite 101; Santa Rosa, 95401).