



'Good Night, Irene' – The Law of Fallen Trees

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Special Bulletin

There is a large and very old oak tree located on your property that was blown over onto your neighbor's house during Hurricane Irene. Is it your responsibility (or your property insurer's) either to: (1) remove the tree; or (2) pay for any damage to your neighbor's house or property caused by the fallen tree?

Since you own the tree and your tree fell onto your neighbor's house, you are responsible – right? Not necessarily.

The law of fallen trees in North Carolina is based largely on the legal theory of negligence. According to this theory, for you to be liable for damages caused by a fallen tree, you must have known the tree was hazardous and the hazard must have been obvious. By failing to eliminate a known hazard, you would be in breach of a duty to protect your neighbor's property. Barring negligence on your part or liability under some other legal theory applicable to specific and unusual fact patterns (such as strict liability, nuisance, or trespass), you would not be responsible. The cost of removing the tree and repairing any damage would "fall" on your neighbor rather than on you or your insurance company. The theory of strict liability does not apply in North Carolina. Therefore, liability can be shifted to you only by nuisance or trespass theories, but they apply only in rare circumstances, and the majority of cases are based on negligence.

How far must you go to ensure that your tree is not posing an obvious hazard? At present, there appears to be no legal requirement in North Carolina that you inspect trees on your property to determine if they pose a hazard. If a tree is alive, appears to be generally healthy, and is not leaning toward your neighbor's property, then the falling of the tree during a hurricane or other storm (no matter how large or old the tree) normally is considered an "act of God" which involves no negligence or liability on your part.

Does the answer change if the tree is located on city property and the city is the tree owner? Probably not. The same requirement for negligence applies to a city as to a private landowner. As a matter of public policy, however, a city may voluntarily inspect trees located on the city's rights-of-way to identify any dead, diseased, damaged, or otherwise hazardous trees, and if the inspection uncovers the hazard and the city does nothing to prevent harm, the city will be liable (if it has waived its sovereign immunity by purchase of insurance or otherwise). But, as is the case with a private owner, there appears to be no legal requirement for a city to inspect city-owned trees in order to avoid liability.

What is the lesson for you as a landowner? First, remove any trees that are dead or obviously hazardous and pose a potential threat to your neighbor's property. Second, contact the owner if you observe a particularly hazardous-looking tree on adjoining property, such as one that is dead or appears diseased, rotten, or leaning precariously toward your property. By notifying the tree owner, preferably in writing, you can effectively shift responsibility to the owner if a reasonable person would have removed the hazard and the tree later falls and damages your property.

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