



Liability for Hazardous Trees

What is the Issue?

Texas is no stranger to natural disasters of all types, having recently experienced an unprecedented drought and wildfire season in 2011. Though there is no official count for the total number of trees killed by wildfire each year, foresters and analysts have estimated that 301 million trees in rural forested areas and another 5.6 million trees in populated urban areas were killed as a result of the 2011 drought.

What is the Threat?

Standing, dead trees. They're dangerous and unpredictable, and if they fall, they can cause serious damage and even death. The general rule of thumb: if the tree is on your land, you're liable for any loss or damage caused when it falls — be it limbs, branches or the entire tree.

How to Take Action:

Texas A&M Forest Service encourages property owners to remove dead trees within falling distance of neighboring homes, roads and pathways. Failure to do so could make these property owners liable for resulting damage. The more populated the area, the more damage that can be caused, which is why special consideration should be given to dead trees that are on properties in populated areas.

Liability of Tree Owners:

Landowners and homeowners — as well as anyone else who's responsible for a piece of property and its trees — are urged to take reasonable steps to manage and reduce the risk associated with falling trees and branches.

An extremely important component in reducing liability (risk) includes the **identification and professional assessment** of trees that might cause injury or place property at risk. Potentially hazardous trees can't be removed until they've been identified. Property owners living in and around populated areas should be particularly proactive in removing dead trees.

Inspections and Risk Assessments:

Planned tree inspections and associated risk assessments performed by a certified and experienced arborist are essential. Inspections should be conducted immediately after observing dead or dying trees resulting from wildfire, prolonged drought, insect/disease infestation, severe storms or other climatic events.

Initial visual inspections by an arborist may indicate the need for a more detailed examination. The inspection should include the entire tree, not just parts that appear to be in a poor condition or in danger of falling.

Basic guidelines for conducting risk assessments:

- Schedule regular inspections (as often as annually).
- Schedule additional inspections following storms, fires or severe weather events.
- Remember that the frequency of inspections should be related to the condition of the tree(s) and the risk it poses.



While some sources may suggest less frequent inspections, it is important that trees in the highest-risk locations — such as those adjacent to roads or overhanging third-party property — as well as species that are particularly susceptible to disease or decay be inspected regularly. Such locations and trees need annual inspections and may require additional reviews after any period of severe weather. In areas with limited risk — such as remote areas where there is little public access — inspections can be done less frequently.

A proper tree risk assessment should conform to the American National Standards Institute (ANSI) “A-300 *Standard Practice for Tree Care Operations, Part 9 — Tree Risk Assessment*,” and should consider the following:

- Location of the tree(s) in relation to people, property and adjacent thoroughfares.
- Age and condition of the tree(s).
- Species of the tree(s); some trees are better able to withstand decay.
- Specific nature and type of any damage, decay or fungal attack.

How to Choose a Tree Care Professional:

A tree care professional generally is regarded as competent if they possess a suitable mix of both formal qualifications and practical expertise. There are a number of relevant qualifications including:

- Certifications and examinations offered by the tree care industry and trade groups.
- Degree(s) from accredited university.
- Years of professional experience.
- Job history/personal and professional references.

In addition to the above, individuals also should be required to demonstrate their expertise through their length of employment in the field and tenure as a skilled professional in a position of responsibility.

Choosing a Contractor:

While it is possible for property owners to perform much of the remedial work themselves, it also is important that you recognize your limits. Accurate risk assessment and safe removal of large trees are best left to the professionals.

When using a contractor, be sure that all people carrying out work on your property are competent, certified and hold adequate liability insurance covering both the company and their employer — i.e. you. This protects you should there be any unforeseen consequences related to the work. If there is an accident, you may be held liable if the contractor does not have suitable or sufficient insurance.

Local Authorities:

Depending on where you live, there may be certain codes or ordinances allowing various authorities — such as the city, county, municipality and/or neighborhood associations — to deal with dangerous trees that overhang the highway, obstruct views, pose a public hazard, etc. Some rules allow authorities to fine you for unauthorized tree removals; others can order you to cut or prune trees or vegetation that doesn’t conform to local code and/or ordinance. We strongly advise that you check with the appropriate city/county officials to understand local codes and ordinances addressing trees and vegetation management issues.



Risk Control:

Simple options for reducing the risk associated with falling trees and branches:

- Modify usage by re-routing paths, walkways, playscapes or parking areas.
- Utilize industry-approved bracing, bolting and pruning techniques to increase tree/branch integrity and stability.
- Remove the tree, which removes the risk.

The most appropriate action will always depend on the circumstances. If the tree is of no significant value, removal may be a suitable option. However, if the tree is of great value — rare or historically significant — re-routing adjacent footpaths may be the better approach.

Summary: Action Steps to Reduce Tree Risk

- Consult with a certified arborist or tree care consultant.
- Develop a procedure to identify trees presenting the greatest risk.
- Set up a regular inspection program.
- Take remedial action as necessary.

Sources of Tree Care Information:

International Society of Arboriculture: www.isa-arbor.com

International Society of Arboriculture – Texas Chapter: www.isatexas.com

Texas Forest Service: <http://texasforestservicetamu.edu>

American Society of Consulting Arborists: www.asca-consultants.org/about/index.cfm

Why Hire an Arborist?

<http://essmextension.tamu.edu/treecarekit/index.php/before-the-storm/planting-and-tree-maintenance/why-hire-an-arborist/>

Where to Find a Local Arborist or Tree Care Consultant:

www.isa-arbor.com/faca/findArborist.aspx

www.treesaregood.org

www.asca-consultants.org/find/directorySearch.cfm