

The Apple, the Tree and the Law

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Given the residentially wooded nature of North Oaks, it is no surprise that trees and the law are often hot topics. While tree law is still evolving there are a few fundamental laws that can be cited with regards to boundary trees. Boundary trees are those trees that are situated near or on a property line. Generally they are trees that are admired and adored until a problem arises.

In most states it has been established, with common law, that if any part of the trunk of the tree is on both sides of a property line the tree belongs to both owners. Even if the tree was originally planted on Mr. Right's property, and the trunk has grown onto Mr. Wrong's land, it is now owned by both neighbors. Obviously this can cause problems, and neighbors need to respect and communicate with one another before any action is taken upon the shared tree. Not only should this be out of a mutual respect for the neighbor but for the well-being of the tree as well.

In Minnesota, however, this is not the case. The courts would look at what the conduct of the adjacent landowners was to the tree. If both paid for, planted, and took care of the trees the tree would be considered a boundary tree and would be the responsibility of both parties.

Generally, a property includes the space above it as well. If Mr. Right plants an apple tree on his property and it eventually grows nice and tall and begins to spread its fruit laden branches over Mr. Wrong's fence, then does Mr. Wrong have the right to remove the branch? Legally yes, Mr. Wrong can cut the branch off the apple tree at which point it crosses onto his property. However, we all know that that is not the best way to prune a tree. The remaining stub will most likely continue to die back and may be a vector for other pests and diseases.

In a perfect world Mr. Wrong would have approached Mr. Right and made him aware that his apple tree was encroaching on his property and could they kindly prune it back to a major limb. Mr. Right would clearly oblige in this perfect world, and following national arboricultural standards, properly prune the branch back, and then invite Mr. Wrong over for a glass of freshly squeezed apple juice.

What if Mr. Wrong decided the branch didn't bother him all that much because he liked the small harvest he received each year as a result of this well intentioned, but clearly misguided, apple tree. Not so fast Mr. Wrong. The person that owns the tree owns the products as well. But just exactly how Mr. Right is going to harvest his tree, without permission, on the "wrong" side of the fence remains to be seen, maybe he could bring back the tools he borrowed last spring.

Even if Mr. Wrong has the right to remove the branch, Mr. Right has the right to the wood and fruit. Even if he doesn't want the branch and the fruit on the branch, it does belong to him and some issues have arisen as to exactly how this wood is returned to its rightful owner. However, any fruit that has fallen to the ground can become the possession of Mr. Wrong.

Legalese aside, the moral of this story is to cooperate and communicate with your neighbors. What you do on your property can adversely affect your neighbors property as well. Be respectful, be proactive, and don't just wait for the apple to fall from the tree.

(Editor's Note: The information contained in this article covers general principles of law as they relate to trees in Minnesota. However, each tree and location are unique, so before acting or making recommendations based on this article, it is necessary to consult with a knowledgeable attorney to figure out how the law applies to your situation. Sources: 1 In the Shade of a Tree: Analyzing the Tree-related legal problem. Steve Pihlaja and Lorrie Stromme, March 2002. 2 Trees and the Law. Tree City USA Bulletin No. 49.)

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