



Q&A— Street Trees/Right of Way

Sometimes when a sidewalk is adjacent to the curb, the tree planted next to the sidewalk can be a street tree, or not. Not knowing whether a tree was on private property or city right-of-way, how do you determine if it is a street tree, and who is responsible if a branch failure results in property damage or injury?

This is a sticky question because each jurisdiction has its own regulations regarding sidewalk restrictions and liabilities. Some municipalities put all sidewalk damages on the homeowner while others take full municipal responsibility. In areas where regulations do not exist, it will depend on the location of the sidewalk. If owned by the city, usually the city will be responsible. If the sidewalk is on city property and the tree is entirely located on the landowner's property, the landowner may be required to make repairs (again it depends on where you live). The opposite is true also- if the landowner owns the sidewalk and the municipal tree causes damage, the owner may be entitled to damages. Then there is the issue of easement rights and the duties of the easement holder, duty of the landowner, local precedent and so on. As you can imagine, sidewalk/tree issues can be very complex. In many situations, it may not be clear who is responsible for what. If in doubt, contact an attorney who can determine the legal obligations of the situation.

—Marty Shaw, RCA #470

There are property maps available at Planning and Assessors Departments that can provide property boundary lines. In some

instances these sources provide digital website photographic "birds eye" views of locations with property line overlays that provide this information. These overlays can provide information on property boundaries, public right of ways, easements, stream, and creek beds for a location.

In some instances, and becoming more common public organizations; cities, counties and states are requiring property owners to maintain vegetation on public right of ways. A check of these Organization's Ordinances can provide information on who is responsible.

In other situations State, County, and Local properties that are owned by the organizations are properties that ownership is responsible for maintaining vegetation. They own through a deed to the property by an agreement or document of ownership.

—Ed Gurka

These are all legal questions, and not within the purview of the arborist. Ownership, responsibility for maintenance of trees, sidewalks, etc., and liability regarding damages or injuries vary by jurisdiction. They are often obscure. Rights-of-way are often not clear. Because these are issues of law, the consultant cannot offer interpretations. She may be able to research the issues and assist the client with developing the case, but an arborist should not make any assumptions about liabilities without competent legal council.

—Russ Carlson, RCA #354

What if the trunk of a tree is partially on private property and in a city Right of Way, who is responsible for pruning to maintain safety and adequate clearance over sidewalk and street?

There is no blanket rule. It depends on local law and practice.

—Scott Cullen, RCA #348

Whether or not such things are addressed in municipal codes at all and how maintenance responsibility, ownership and liability are determined varies between jurisdictions. Many factors besides ownership come into play when liability is argued in civil actions. Such issues are legal questions, and it is generally not the role of a Consulting Arborist to determine the answers.

—Torrey Young, RCA #282

Again, same basic answer, it all depends. There are cases in my book, Tree Law Cases in the USA, where courts have decided that the municipality is responsible and cases where the adjoining property owner is responsible. It is interesting to me that most of these municipal cases were decided in favor of the defendants.

—Lew Bloch, RCA #297

What if the adjacent concrete sidewalk is raised and someone trips over the displaced sidewalk and is injured. Who is responsible?

Q & A—Street Trees/Right of Way *continued*

Whether or not such things are addressed in municipal codes at all and how maintenance responsibility, ownership and liability are determined varies between jurisdictions. Many factors besides ownership come into play when liability is argued in civil actions. In addition to the City and/or the tree or adjacent property owner, those with legal exposure may include maintenance contractors, the sidewalk installation contractor, even agencies with adjacent utility boxes, poles or underground pipes or wires that may have contributed to sidewalk displacement. Such issues are legal questions, and it is generally not the role of a Consulting Arborist to determine the answers.

—Torrey Young, RCA #282

Again, this varies from jurisdiction to jurisdiction. It is, in my experience, the owner of the concrete that is liable. Transferability of that liability to the tree owner may or may not be possible. An arborist should make no assumptions and offer no advice that borders on a legal opinion in any way. This is a legal question and should be posed to an attorney.

—Don Zimar, RCA #446

The responsibility may be determined by the height of the offset, if there was a pre-existing notice or contact that the defect exists, if there were previous repair or temporary repair efforts, and if the pedestrian knew about the defect. Responsibility, while it may tie to ownership, may be determined by ordinance or other rules in the community or jurisdiction.

Depending on the incident, severity of damages, and where the resolution takes place, responsibility may be determined through a claims process, a court, jury, judge, or arbitrator.

My follow up concern is what is decided about repairing the sidewalk and considering what to do about the tree conflict.

—Gordon Mann, RCA #480

Why don't you and him fight? Again, the public agency is responsible for public safety. However, maintenance requirements vary among jurisdictions. You will have to look at local regulations. Is this really your pond of expertise to be fishing in?

—David Hayes

What if a tree is obstructing a motorist's clear view of a control signal, or traffic sign e.g. a stop sign, and an accident occurs. Who is responsible?

City is responsible. They may show however that they have an action plan to deal with this issue but some budget and personnel constraints may not allow getting to the issue right away. Judges are good for figuring these out if it is serious. With all that said, some people are just looking for a reason to try and get some money!

—Peter Shields, RCA #536

This can vary greatly from one jurisdiction to another. In my experience, it is typically

the owner of the device that is responsible for it functioning appropriately. Who is responsible for the accident is a legal determination, not an arboricultural one. Many of the questions in this issue are matters of law, not arboriculture. Arborists should be very careful as to how they reply in this regard. I am not even certain these questions should be posed to arborists. We as arborists get annoyed when attorneys, engineers, or lay people offer opinions of trees. Should they be equally annoyed if we render an opinion regarding the law or that is relevant to their profession?

—Don Zimar, RCA #446

This question also is best answered by a call or visit to the local jurisdiction for their regulations and past practices and decisions regarding sign clearances. And, again, a legal decision on this question that can be referenced in your arborist report would be most helpful.

—John Harris, MS, MBA, BS 🌿

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