

Q&A

Split Decision: The Issue of Borderline Trees



What are the criteria that define a borderline tree?

In the book, *Tree Law Cases in the USA* (by me) it states the following; "...in general, a boundaryline tree is one with a property line going through any part of the tree trunk." "A borderline tree, on the other hand, may be located near a property line but has roots or branches that extend over a property line." However, as I have repeatedly preached for years, for a legal opinion, do not ask an arborist; ask an attorney. Furthermore, also not a legal opinion, it is possible that a borderline tree can be jointly owned. And another non-legal sidebar, when a borderline tree's trunk grows wider and crosses over the property line (is this trespassing?) the tree will become jointly owned and be a boundaryline tree.

—Lew Bloch, RCA #297

My understanding is that a boundary tree is any tree in which any portion of the above ground parts of the buttress roots, buttress or main trunk or stem intersects one or more property boundaries.

There may be different interpretations of this depending on:

- Local laws
- Whether or not the tree arose naturally or was planted
- Who planted the tree
- Whether or not the tree grew into the boundary over time
- Who has maintained the tree in the past

—Marty Shaw, RCA #470

A borderline tree? I don't know what a borderline is. Boundary line or co-owned tree is much more accurate. That is: a tree with any part straddling or touching the surveyed

boundary line at ground level. The first criterion is that the boundary line (the boundary line could be a property line or an easement line) be surveyed by a licensed surveyor to determine its position. The second criteria is that its trunk is bisected, even if only partially or slightly, by the surveyed boundary line.

—Don Zimar, RCA #446

A tree that is all or in part in/on a boundary, perhaps excluding trees with just a few small branches or branch tips. A tree with scaffold limbs attached just over the boundary, the same with large roots, and certainly if a portion of trunk (base or at some point) is over the boundary.

—David M. Braun, Ph.D.

How do you advise clients to handle disputes over the care of borderline trees?

The common law as I understand it as an arborist familiar with these situations and a layman regarding the law (so as not to be construed as offering any type of legal opinion) is that the co-owners of boundary line trees are to seek permission from the other party prior to performing any type of activity affecting the tree. Absent the permission of the other co-owner, they should seek legal advice and do nothing if a dispute arises regarding the treatment of a co-owned tree until the dispute is resolved.

—Don Zimar, RCA #446

I advise them to communicate and agree on a solution. I also say that: "most neighbors split the cost of care or removal." I also add that "it is my understanding" that one neighbor can not significantly dam-

age, kill, or remove a borderline tree without being liable for compensation to the other, even though they "own" the above and below ground portion on their property.

— David M. Braun, Ph.D.

I think the best advice I can give is to communicate with your neighbor, share concerns of both the benefits and liabilities that the tree presents and work hard to reach mutual understanding of who owns what, who is responsible for what and work hard to resolve any differences in opinion. Whether they like it or not, neighbors must work together for the benefit of both. It's a situation tailor-made for a good consulting arborist to offer independent, objective and sound advice.

—Marty Shaw, RCA #470

This should be an easy no-brainer, but it is also usually complicated. The obvious and best advice is to get the two neighbors to meet and come up with a plan that will be suitable to everyone. Unfortunately, these types of tree issues, and I get a lot of them, tend to get quite emotional. I will always tell my client up front that I will not be emotional in my analysis or solution, and it is quite possible that once I make a site visit, I may not agree with their opinions. Many times, after listening to the prospective client rant and rave about their tree issues with their neighbor, I ask them if they are having any other problems with this neighbor other than the tree. Often, I get, "Yes, how did you know?" I even had a recent case actually go to trial in criminal court when one neighbor filed criminal charges against their neighbor for some pruning beyond the property line.

—Lew Bloch, RCA #297

What have you found to be acceptable resolutions over disputes involving borderline trees?

Every situation is as different as are the people who live side by side as neighbors. I don't know if I have had two boundary tree disputes that were the same, and solutions have all been uniquely different. I think that by understanding the relevant facts, taking out the emotional stuff that invariably creeps into these situations, and being candid about the plusses and minuses of escalating a dispute, we can help both sides see more clearly where there are opportunities to resolve the conflict. The alternative can be so much more costly in so many ways that most people (when they know that) want to work together to find a solution before they do something that they cannot take back.

—Marty Shaw, RCA #470

Obviously, with the emotional aspects of the parties, this is not easy. As stated, if the two parties can get together to come up with solutions, this would be great. This is really rare by the time the situation reaches my involvement. However, one great way to resolve the issues that sometimes will fly is to have both parties, after visiting my web site, agree to split my fee for the consultation. That way neither party can say that I am biased, and then I can give my opinions unemotionally. Unfortunately, most of the time I will be writing a report about the tree (quite often a tree-risk assessment scenario) to be used for a possible legal matter or maybe just create a paper trail in case something does happen to the tree or maybe to verify that a tree is not a high-risk tree. Often these borderline issues involve appraising the monetary value of plants that were damaged or destroyed; sometimes intentionally and sometimes accidentally. Each situation has a unique quality about it.

—Lew Bloch, RCA #297

Typically, if the co-owners are neighborly, the treatment is agreed to, in writing, and the work performed as described in the written agreement. When disputes have arisen, they have typically been resolved in court. These decisions have typically been in favor of the party seeking to do work, after signifi-

cant legal expense, if the contemplated work being requested is reasonable. The worst situations, and most expensive, have arisen when one party acts first and ends up in court later. Then, I have seen anything from dismissal because the tree and the neighbor suffered no actual harm to compensation to the neighbor contesting the work for half the value of the tree. Once it goes to court, the decisions are no longer in the hands of the parties involved. It is always best if they can resolve any disputes amicably prior to the work being done. However, many times these disputes are more about feuding neighbors than they are about the tree.

—Don Zimar, RCA #446

Neighbors come to an agreement on care or removal, and either split cost or one party agrees to pay for all.

— David M. Braun, Ph.D.

What advice would you give to commercial arborists regarding the handling of borderline trees?

Ascertain if it is a borderline tree, and suggest the advice I gave to the second question above. Also, find out if any local ordinances or law applies. In a high value case, suggest that the parties engage a lawyer or mediator familiar with tree law in the state to help them find a resolution.

— David M. Braun, Ph.D.

As part of your tree contract, get a statement from the person requesting the work that they are the owner of the tree to be worked on and have the authority to contract work to the tree. Include a clause that makes the person requesting the work responsible for any disputes, if it is later determined they did not have ownership or authority to perform the work to the tree. This should be a standard clause in the contract. If there is any question, or the owner refuses such language, be suspicious. Ask that the boundary line be surveyed prior to the work being performed. If they are unwilling to confirm they have ownership and permission for the work being performed, proceed with caution.

—Don Zimar, RCA #446

I guess the most important advice is to document everything from telephone call notes, property inspection notes, photos, etc. and get as much as possible from the client in writing. If in doubt about ownership of the tree, ask for a copy of written permission or ownership from the other party. If you are not satisfied that the situation passes the smell test, walk away from the job or you may become a party in a lawsuit. Of course you should never cross the property line without permission even to just inspect the tree.

As a footnote, I know a lot of my ASCA colleagues wear two hats: one as a consultant and one as a contractor. Be aware that this could be perceived as a conflict of interest in giving opinions and advice as well as bidding on doing the actual tree work.

—Lew Bloch, RCA #297

Be aware that boundary trees can be a source of great conflicts among neighbors and that resolving those conflicts are not always easy. These situations often require skills and understanding of arboricultural competence and skills working with people. Sometimes getting the point across to unreasonable people requires an ax and hammer and sometimes it only requires a velvet glove—it always requires good, independent, and objective thinking and sound judgments. Every situation is different. 🌿

—Marty Shaw, RCA #470