

“Can I Trim Tree Limbs?,” Naples Daily News

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Q: I am a new owner of a home located within a deed restricted community. Many of the lots, including mine, have large oak trees located between the rear of the residence and the community property line. The oak trees are never trimmed by the association. One oak tree in particular is located on common property but the huge branches extend out and hang over the roof of my home. I’ve asked the president of my association to trim these tree branches. He has refused to take any action and he told me that I cannot touch the trees or the tree branches and that I must “leave them alone.” I am very concerned about potential damage to my home from these trees and tree limbs given that hurricane season is approaching. Can I trim the tree branches that hang over on to my property? J.B.

A: Yes.

There are two theories which have been brought before Florida courts in an attempt to hold adjacent property owners liable for damage caused by tree roots or limbs encroaching past the property line, nuisance and negligence.

In a 1984 decision, a Florida appeals court noted that while there was substantial authority to the contrary in other jurisdictions, “the undoubted right of the landowner himself to cut off intruding roots or branches at the property line,” precludes a negligence claim.

As for nuisance, the majority rule in this country, which is followed in Florida, is that the owner of land is not liable to persons outside the land for a nuisance resulting from trees and natural vegetation growing on the land because the neighboring owner has the right to trim back roots and branches to the property line.

Applying this law to your facts, you have the right to cut the tree branches that

extend on to your property. That being said, your association does have a duty to maintain common areas, and it could be argued that if this duty is not met, you could make a claim. However, this argument has not been tested in the courts and is contrary to fairly well-established precedent outside of the association setting.

Q: Did any bills which impact community associations pass during the 2020 Legislative Session? D.F.

A: The only noteworthy bill impacting community associations that passed during the 2020 Legislative Session, which ended in mid-March, is SB 1084. SB 1084 is an effort to reign in emotional support animal abuse. The effective date of this bill is July 1, 2020. SB 1084 amends several different Florida Statutes and provides for the following:

- A person who falsifies information or written documentation or who knowingly provides fraudulent information or written documentation to obtain an emotional support animal (ESA) or otherwise knowingly and willfully misrepresents himself or herself as having a disability or a disability related need for an ESA commits a misdemeanor of the second degree. In addition, a person convicted under this new law must also perform thirty (30) hours of community service.
- A health professional who provides information, including written documentation, indicating that a person has a disability or which documentation supports a person's need for an ESA without personal knowledge of the person's disability is subject to disciplinary action.
- Defines an ESA as "an animal that does not require training to do work, perform tasks, provide assistance, or provide therapeutic emotional support by virtue of its presence which alleviates one or more identified symptoms or effects of a person's disability."
- Allows associations to deny a reasonable accommodation request for an ESA if the animal being requested poses a "direct threat to the safety or health of others or poses a direct threat of physical damage to the property of others which threat cannot be reduced or eliminated by another reasonable accommodation."
- Allows associations to request supporting information for the ESA if a person's disability is not readily apparent.
- Clarifies that information which may support an ESA request may include: a determination of disability from any federal, state, or local government agency; receipt of disability benefits or services from any federal, state, or local government agency; proof of eligibility for housing assistance or a housing voucher received because of a disability; information from a health care practitioner, a tele-health provider or any similarly licensed or certified practitioner or provider in good standing with his or her profession's regulatory body in another state BUT only if such out-of-state practitioner has provided in-person care or services to the person on at least one occasion.
- The practitioner or provider of the supporting information must have

personal knowledge of the person's disability and must be acting within the scope of his or her practice.

- If a person requests more than one ESA, he or she must provide supporting information for each animal.
- The association may require proof that each ESA is properly licensed and vaccinated.
- The association may not require persons requesting an ESA to use a specific form and may not deny a request solely because a person did not follow the association's routine method for providing supporting information.
- An ESA registration of any kind including an ID card, patch, vest, certificate, etc. is not by itself sufficient information to reliably establish that a person has a disability or a disability-related need for an ESA.
- Persons with ESAs are liable for any damage done to the premises or to another person by the ESA.