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Community Associations Institute
New Jersey Chapter January 2013

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Neighboring Tree Threatens Your Community, What Can You Do?

Martin C. Cabalar, Esq.
Becker & Poliakoff, LLP

In the aftermath of a severe storm such as Super Storm Sandy, you may find that a neighboring property's tree has fallen on to your community's property. Even leaning trees or overhanging branches may create a nuisance, or worse, a potentially hazardous condition. In the unfortunate event that a neighboring property's tree should fall causing damage to community property, you should immediately contact your insurance company to alert them of the potential claim. Under New Jersey law, absent proof of some negligence or unreasonable activity, liability is not likely to be imposed upon the neighboring property owner, even despite the fact that the tree was located on the neighbor's property.

In the case of leaning trees or overhanging branches, there is a long-standing principle in New Jersey law holding that this may

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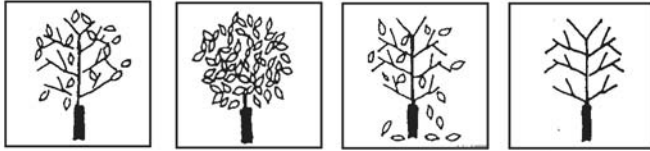
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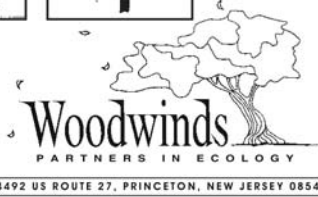
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constitute a nuisance for which an action for damages lies.¹ In such a circumstance, a property owner is entitled to the right of self-help to lop off overhanging tree branches to the property line, but no further.² These legal remedies, however, should only be used as a last resort.

The absolute best solution is to put the neighboring property owner on notice of the nuisance or hazardous condition and coordinate a solution together. More likely than not, the neighboring property owner will recognize the potential liability of failing to take action and will be more than happy to trim back the portions of the tree overhanging on your community's property. There may even be an applicable local ordinance related to the upkeep and removal of trees

“The fact is, after the matter is resolved, you will continue to remain neighbors and, presumably, would prefer to maintain a cordial relationship.”

requiring the neighboring property owner to keep trees trimmed to prevent the creation of a nuisance or hazardous condition.

Immediately resorting to a legal remedy, such as filing a lawsuit or acting upon self-help rights, is not preferred and has effects that cannot be undone. For example, should the community elect to act upon self-help rights, they may be subjecting themselves to liability for trespassing or for damage caused to the neighboring property. More often than not, you will find that in order to properly trim back the tree branches you will need access to the neighbor's property, which will require permission. Furthermore, electing to trim the tree branches can result in damage to the neighbor's property or create a condition which is harmful to the health and continued vitality of the tree, both of which may impose liability upon the community.

Finally, it is important to remember that the owner of the tree is your neighbor. The fact is, after the matter is resolved, you will continue to remain neighbors and, presumably, would prefer to maintain a cordial relationship. If you find that a neighboring

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property owner is not willing to cooperate concerning a tree which has fallen onto or is leaning over your community's property, please consult with your attorney.

NOTES:

- 1 *Ackerman v. Ellis*, 81 N.J.L. 1 (Sup. Ct. 1911).
- 2 *Wegener v. Sugarman*, 104 N.J.L. 26 (Sup. Ct. 1927).

How to Avoid Scams During the Damage Assessment Process

By Mitchell H. Frumkin, PE, RS, CGP
President, Kipcon, Inc.

We have seen countless acts of kindness in the wake of Super Storm Sandy's destruction, from fundraisers and food drives to friends and family opening their doors to neighbors left without power, without heat or — the unthinkable — without a home. Unfortunately, the chaos caused by Sandy

has given rise to charity's polar opposite: scams by con men preying on victims of perhaps the worst natural disaster in New Jersey history.

I can attest that community association managers and multi-unit building owners need post-storm damage assessments to be made both expediently and with a professional's thoroughness.

Unfortunately, scam artists know this as well. Here are a few steps to ensure that the professionals assessing your damage are on the level:

Know what the situation calls for: a licensed professional engineer. Building inspectors and insurance agents have a time and place, but assessing damage following a major storm is a job for a licensed professional engineer (PE). A storm as fierce as Sandy can bring with it dozens of serious, often difficult-to-diagnose problems. Damage to a building's exterior can cause

cracks in other structural elements that may be invisible to the naked eye but can worsen over time if not properly addressed, while water damage to lower levels can seep into foundations and cause far-reaching issues months and even years later.

An educated consumer is a scam artist's worst enemy. In this particular situation, the last thing a con man wants to hear is this question: "Are you a licensed professional engineer?"

Do your research. Several online references are available for selecting professional engineers, including the New Jersey State Board of Professional Engineers and Land Surveyors (<http://www.njconsumeraffairs.gov/pels/>) and the New Jersey Better Business Bureau. Following a disaster of Sandy's magnitude, engineering crews often come in from nearby states, so check with the Better Business Bureaus in New York, Pennsylvania and Connecticut as well.

Verify engineering licenses. Separate the legitimate, licensed professional engineers from the pretenders by checking their licenses and local operating permits. Engineering is a subjective industry whose customers rely on opinions they could not possibly form themselves due to lack of expertise. Engineers without licenses are like doctors without medical degrees: you should not be taking advice from them.

Get references. Licensed professional engineers will have references and be happy to present them to you. Professional engineers should encourage customers to follow up with references because it serves to reassure them in their decision-making process. Community managers have to answer to the neighborhoods they serve; qualified engineers understand this and, in turn, are proud to be accountable to these community managers.

Clearbrook Adult Community Comforts Residents after Sandy Storm

While many communities were criticized for lack of communication and limited support during Super Storm Sandy, Clearbrook Community Association located in Monroe Township provided support to its residents prior to the storm as well as after Sandy left us without power.

Starting Friday, upon notice of the impending storm, maintenance workers were on hand to help residents secure their outdoor furnishings or move them inside. The workers remained on call in the community throughout the weekend to help residents if any emergency situation arose. Post storm, they immediately began the removal of trees blocking roads, driveways, and walkways for the safety of residents. Having the workers remain on site enabled the clean-up of the community to begin quickly because traveling to the community was very hazardous and slow after the storm.

During the aftermath of Sandy, Clearbrook residents were very fortunate to have the clubhouse as a "comfort station." When the clubhouse was enlarged and renovated, a generator was purchased for just such emergencies. Residents were able to come to the lighted clubhouse to keep warm and charge their cell phones, lap tops, and machines for medical needs. Coffee and tea was served and movies were shown in our ballroom, afternoons and evenings, to keep residents occupied and lighten their moods. The computer room was up and running and allowed residents to contact their loved ones and keep updated on the results of the storm. Residents were able to warm a small meal in one of our microwave ovens; some residents even brought food for others to share.



(above) On Wednesday, November 28, 2012 the Clearbrook Community Association (CCA) presented a plaque to the CCA President Lou Caron and General Manager Jane Strydesky, CMCA, AMS, PCAM, in appreciation for all the help during Super Storm Sandy at their open meeting of the residents. Photo taken by Ed Hornichter.

Our wonderful residents pitched in by providing entertainment in the evening with music, sing-a-longs, and games.

The CCA Board of Directors and staff received many thanks throughout the week. All Clearbrook residents were very appreciative of the camaraderie and support that was offered to them at a very trying time. Having the clubhouse available for light, warmth and mingling helped our seniors know they were not alone and made an unfortunate situation bearable.

— Jane Strydesky, General Manager
Clearbrook Community Association

"A storm as fierce as Sandy can bring with it dozens of serious, often difficult-to-diagnose problems."

