

## See the Forest for the Trees

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*One generation plants the tree, and another gets the shade. — Chinese proverb*

Trees provide numerous benefits to a community, adding beauty, offering a natural cooling system by providing shade, and giving birds and animals a habitat. However, trees are often the cause of problems for homeowners associations, and some of the problems caused by trees are not immediately apparent but only develop over time as the tree grows. As they grow, trees cast larger shadows, expand their root systems, and grow branches, which can lead to interference with views, disturbance of sidewalks and foundations, encroaching branches into a neighbor's yard, or the blocking of adequate sunlight for a solar energy system to work.

### Roots and Branches: Trees as a Nuisance

One of the most common problems trees pose is where the branches of a neighbor's tree are intruding into someone else's yard or common area. Another common problem posed by trees is that the roots grow so large that they make sidewalks, driveways, or foundations buckle. Both situations pose potential health and safety hazards, and could injure people or damage property. What is an association to do?

**Determine the owner.** First, it's important to determine who is responsible for the tree that is causing the problem. An association's CC&Rs and operating rules are the first places to look for guidance. Relevant *Civil Code* provisions and case law should also be considered and, when taken together with the community's governing documents, responsibility for the errant tree can be determined. In general, where the tree trunk is located determines who is responsible for the tree and if the damage to person or property can be traced back to that tree, the tree owner will ultimately be responsible for the harm it caused.

Governing documents generally provide for the maintenance and upkeep of landscaping, including trees. Architectural rules may address specific restrictions related to trees and plants. Often – but not always - responsibility for a tree depends upon whether it is located on common area, exclusive use common area, a homeowner's lot, or city or county property. Associations typically maintain all landscaping situated on common area, including trees. In planned developments, owners are generally responsible for all landscaping on their lots, if the lots extend beyond the perimeter of the building, but some CC&Rs provide that the association is responsible for maintaining landscaping in front yards. The association may maintain landscaping in the area between the curb and the sidewalk, which may include “street trees” (this area is often referred to as the “parking strip”); alternatively, the city, county, or a community services district may be responsible for this area. Condominiums may include small back yards, patios, or balconies that are designated as exclusive use common area in the

CC&Rs, and owners may be permitted to landscape these areas. Each community is different and should be evaluated in light of its governing documents, but the general rule is the party responsible for maintenance of a specific area of the project would also be responsible for the trees located there.

However, governing documents often fail to address situations where a tree has overgrown its original boundaries. In such situations, the *Civil Code* and relevant case law provide additional guidance.

**Self help.** Assume that an owner has planted a tree in his/her yard and its branches or roots are growing into the common area. What can the association do to address this problem? The California *Civil Code* provides that, if a tree's trunk lies entirely on the real property of one owner, then the tree belongs solely to that property owner.<sup>1</sup> California courts have interpreted this code section to mean that encroaching branches and roots constitute a nuisance and may be cut back and removed by a neighboring property owner (in our example, the association) up to, but not exceeding, the shared boundary line, without having to apply to a court for an injunction. However, a neighboring property owner must act reasonably when pruning branches or removing tree roots. Hacking away indiscriminately at roots or branches without regard to the effect on the tree could subject the neighboring property owner to liability for damages to the tree owner,<sup>2</sup> and cutting the tree down altogether or going beyond the shared boundary line into the tree owner's property is prohibited.

While these self-help measures are legal, it is prudent for the association to first notify the tree owner of the problem and the need for tree maintenance. If the owner fails to respond to the notification letter, the association may also call the owner to a hearing before the board.<sup>3</sup> If the tree owner still fails to take appropriate action, or if the situation poses an immediate threat to the community's health and safety, then the association can use self-help and, if permitted by the governing documents, seek reimbursement from the tree owner for the work performed by the association. As a last resort, the association can apply to a court for an injunction (to prune or remove the tree) or for damages (for personal injury or property damage caused by the tree).

The association should ensure that common area trees are well-maintained and that neither branches nor roots encroach onto neighboring property, or else the association may be liable for damage caused by the tree.

**Co-ownership issues.** What if the tree trunk straddles the boundary line between two parcels? In this situation, the *Civil Code* states that the adjacent property owners co-own the tree.<sup>4</sup> California courts have not often taken up this issue; however, in the most recently reported case, the court held that that neither owner could do anything injurious to the tree, including pruning, trimming, or other tree maintenance, without the consent of the other co-owner. Such a situation might arise where, for example, the community has a line of trees planted to provide a windbreak along the boundary line of one or more individually-owned lots and common area. Would the association need to confer with each homeowner with whom it co-owned the line of trees before pruning them? The answer is unclear: case law suggests that

yes, the association would need to confer with each tree co-owner; however, as a practical matter, this seems cumbersome, awkward, and not the intended result when the development was built and the original governing documents drafted. However, if the governing documents don't specifically indicate who is responsible for such boundary-line trees, the association should clear up any confusion before performing any arboreal maintenance.

### Trees and Interference with Views

Many people buy a home, in part, for the view it offers. Part of the home's value may, in fact, be related to its panoramic view of natural beauty or city lights and, as decided in the recent case of Ekstrom v. Marquesa at Monarch Beach Homeowners Association,<sup>5</sup> trees that interfere with views may be subject to trimming or removal. California courts generally uphold CC&R restrictions that require that trees be "topped" or otherwise pruned so as not to interfere with or obstruct the view from neighboring residences.

Palms are trees, too. In the Ekstrom case, owners in southern California paid a premium for homes with a view of the Marquesa golf course or of the Pacific Ocean. Although the CC&Rs warned owners that their views might be impaired, the CC&Rs provided that no tree could be taller than the height of the house on the lot where the tree was situated. If the tree grew taller than this limit, it had to be trimmed. The board of directors took the position that the tree-trimming requirement applied to all trees *except* palm trees (of which there were many in the community) because trimming a palm tree would effectively require its removal. The court ultimately held that the plain language of the CC&Rs required that "all" trees included palm trees and that, if the palm trees exceeded the height limit and blocked an owner's view, they had to be trimmed or, in the case of palm trees, removed altogether. The Board, the court said, had overstepped its decision-making authority by making rules that were in direct conflict with the CC&Rs. The palm trees had to go.

In Ezer v. Fuchsloch,<sup>6</sup> homeowners unsuccessfully argued that a 25-foot pine tree, planted by the prior owners, should not have to be trimmed or removed despite neighbors' contentions that the tree obstructed their view. In this case, the tree owners argued that the lone pine tree's interference with their neighbors' view was negligible and therefore, trimming the tree so that it was house-height was not necessary. The tree owners also argued that they should not be responsible for the tree because they did not originally plant it. The court rejected both arguments, stating that the CC&Rs were clear in their prohibition against the planting of any tree "that may at present or in the future" obstruct a view and that placing a "house-height" restriction was reasonable. Bottom line: the pine tree had to be trimmed so that it was no taller than the house on the lot where the tree was located.

### Trees and Interference with Solar Energy Systems

Owners are installing solar energy systems<sup>7</sup> on rooftops, building exteriors, and even on the ground. In order for these systems to produce hot water, electricity, or to heat or cool a residence, they need access to the sun. Trees produce shade that blocks solar access. California law requires a tree owner to keep his/her trees from casting a shadow "greater than 10% of the collector absorption area" at any time between the hours of 10:00 a.m. and 2:00 p.m.<sup>8</sup> This

law became the centerpiece of a recent dispute between neighbors in Sunnyvale, one of which installed a solar photovoltaic system next door to large redwood trees planted by his neighbors years before the solar energy system was installed. The tree owners were ultimately convicted in Santa Clara County criminal court for a “public nuisance” and forced to trim their redwood trees. The California legislature responded to this result by amending the existing solar shade law.<sup>9</sup> Now, whichever is “first in time” – the tree or the solar energy system – can remain. If the tree is already on the adjacent property, then the owner planning to install a solar energy system must take the tree – and its potential growth – into account when planning the system’s location. Likewise, if the solar energy system is installed first and an adjacent owner wants to plant a new tree, the tree owner must consider its proposed location in relation to his/her neighbor’s system, and be prepared to trim or prune the tree so as not to block the sun.

## Conclusion

Associations should ensure that all trees in the community are well-maintained – by the association itself or by the owner on whose property the tree is located. Overhanging branches or out-of-control root systems can do serious damage to buildings, fences, sidewalks, streets – or people. If a tree is interfering with a homeowner’s view, check the CC&Rs for a relevant provision protecting views from obstruction resulting from tree growth. Lastly, make sure you have a solar energy system policy that addresses the solar shade law and makes all owners aware of its potential effect on their property.

<sup>1</sup> California *Civil Code* §833.

<sup>2</sup> Under California law, trespass onto another’s property resulting in “wrongful injuries to timber” including removal of trees can result in liability for treble damages (California *Civil Code* §3346).

<sup>3</sup> California *Civil Code* §1363(h); California *Corporations Code* §7341. The governing documents should contain procedural details related to hearings consistent with California code.

<sup>4</sup> California *Civil Code* §834.

<sup>5</sup> 168 Cal.App.4th 1111 (2008).

<sup>6</sup> *Ezer v. Fuchsloch*, 99 Cal.App.3d 849 (1979).

<sup>7</sup> Solar energy systems that may be installed in common interest developments include water heating systems; photovoltaic systems intended to produce electricity; and home heating and cooling systems. California *Civil Code* §714(d).

<sup>8</sup> California *Public Resources Code* §25982.

<sup>9</sup> Sen. Bill 1399 (enacted July 22, 2008) codified at California *Public Resources Code* §§25980 et seq.