

Trees and Neighbors

Who owns a tree near the property line?

Tree ownership depends on the location of the trunk. If the trunk is on the property line, the tree belongs to both neighbors. Otherwise it's exclusively owned by one neighbor or the other, even though the roots or branches may extend across the property line.

May I cut back overhanging branches?

Yes. A neighbor has the right to remove branches or roots that cross the property line, whether they cause damage or not, if the overall health of the tree is not harmed. The neighbor may use self-help and does not need to first seek court approval.

Before I cut back overhanging branches, should I consult an arborist?

Yes! Even where there is no danger of serious injury to a tree, cutting back a tree should be done carefully. Sawing off a limb can be a trespass where the saw extends over the property line. You'll want to take pictures of the tree before and after the removal. You should also avoid sawing off tree branches in a vertical plane above the neighbor's property line, since cut branches may lift and curve up soon after cutting making it appear that cutting occurred on the wrong side of the property line. Do it wrong, and you may be subject to treble damages.

My rain gutters are being clogged by my neighbor's tree. Does my neighbor owe me the cost of hiring a worker to remove the leaves?

Probably not. Even though you may have a right to cut back overhanging branches, a claim for damages based upon falling leaves is unlikely to win in court.

If there is an encroaching tree on the seller's property, what actions should be taken by the listing agent to ensure the sale of the property?

The only thing that the listing agent *must* do, is make sure it's disclosed, especially if there is an ongoing dispute. The seller may use the TDS or SPQ to make the disclosure. If the seller fails to disclose the encroachment, and the agent is aware of it, then the obligation to disclose will fall upon the agent.

But what if the buyer is demanding that the dispute be resolved?

While an agent may initiate the discussion with the neighbor, any final settlement should be drawn up by an attorney. It's best not to raise expectations and overestimate the ease of resolving such disputes.

A more effective approach might be to simply negotiate a credit or reduction in purchase price. Or, the seller may also consider doing nothing. There is no obligation on the seller to do anything -- other than disclose it. Using the C.A.R. purchase agreements, the property is sold "As-Is" and that applies to neighbor disputes as well.