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Handbook of Florida Fence and Property Law: Trees and Landowner Responsibility[1]

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Preface

With approximately 19,000 livestock farms in the state, along with horse farms; orange groves; croplands of soybeans, sugarcane, cotton, and peanuts; and many other agricultural and livestock facilities, livestock and farming have a significant impact on Florida's economy. Florida's agricultural economy has been required to co-exist with rapid population and commercial growth in the state over the last twenty-five years. Conflicts between these interests bring to prominence issues such as the rights and responsibilities of adjoining landowners, farmers, and property owners in general. Due to the added importance placed on these areas of real property, the legal aspects of fences in the state of Florida have taken on significant importance.

This handbook is designed to inform property owners of their rights and responsibilities in terms of their duty to fence. Discussed areas include a property owner's responsibility to fence when livestock is kept on the property, the rights of adjoining landowners to fence, the placement of fences, encroachments, boundary lines, easements, contracts, nuisances, and a landowner's responsibilities towards persons who enter his or her property.

This handbook is intended to provide a basic overview of the many rights and responsibilities that farmers and farmland owners have under Florida's fencing and property law. Readers may value this handbook because it informs them about these rights and responsibilities. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this handbook is based are subject to constant revision, portions of this handbook could become outdated at any time. This handbook should not be viewed as a comprehensive guide to fencing and property laws. Additionally, many details of cited laws are left out due to space limitations. This handbook should not be seen as a statement of legal opinion or advice by the authors on any of the legal issues discussed within. This handbook is not a replacement for personal legal advice, but is only a guide to inform the public on issues relating to fencing and property laws in Florida. For these reasons, the use of these materials by any person constitutes an agreement to hold the authors, the Institute of Food and Agricultural Sciences, the Center for Agricultural and Natural Resource Law, and the University of Florida harmless for any liability claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this handbook.

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Readers wishing to find further information from the Florida Statutes may access those statutes online at http://www.leg.state.fl.us/STATUTES/.

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Landowner Responsibilities for Trees

What is the rule for the removal of a healthy tree on boundary line?

The removal of a tree on a boundary line by one landowner without the consent or authorization of the adjoining landowner may result in liability for the "reduction in value of the land resulting from removal of the tree," as well as for the "loss of the ornamental value and creature comforts provided by the tree." *Elowsky v. Gulf Power Co.*, 172 So.2d 643, 645 (Fla. 1st DCA 1965).

In *Elowsky*, a tree was located on the boundary line between the properties of the plaintiff ("P") and the defendant ("D"). *Elowsky*, 172 So.2d at 644. P was a police officer who worked night shifts and regularly had to sleep during the day. *Id.* The tree shaded and cooled the bedroom during the afternoon. *Id.* D removed the tree, and P had trouble sleeping after its removal. *Id.* The jury awarded P $500 in damages. *Id.* The First District upheld the verdict, stating:

> "An owner of real estate has a right to enjoy it according to his own taste and wishes, and the arrangement of buildings, shade trees, fruit trees, and the like may be very important to him, may be the result of large expense, and the modification thereof may be an injury to his convenience and comfort in the use of his premises which fairly ought to be substantially compensated, and yet the arrangement so selected by him might be no considerable enhancement of the sale value of the premises, it might not meet the taste of others, and the disturbance of that arrangement, therefore, might not impair the general market value . . ."

Id. at 645 (citing *Gilman v. Brown*, 91 N.W. 227 (Wis. 1902).

What is the liability for over-hanging branches and encroaching roots?

Branches and roots frequently extend across property lines. Whether branches or roots from a tree on an adjacent property are the responsibility of the landowner whose property holds the tree, or of the landowner whose property has the branches overhang or roots encroach, depends upon the branches or roots themselves. If the branches or roots are healthy, then the landowner with the tree located on his or her property is not liable for damage caused by those branches or roots. The adjoining landowner may, at his or her own expense, trim back the branches or roots as he or she desires up to the property line. If the branches are dead, however, then the landowner with the tree located on his or her property may be responsible, and could be liable for damages caused by the branches. 1 Fla. Jur. 2d *Adjoining Landowners* § 8 (2022).

In *Scott v. McCarty*, 41 So.3d 989 (Fla. 4th DCA 2010), a property owner brought action against a neighbor alleging that overhanging branches and roots from the neighbor's tree caused damage to his property. The court affirmed the trial court's dismissal with prejudice of appellant's complaint for damages. The court's decision was based on *Gallo v. Heller*, 512 So.2d 215, 216 (Fla. 3d DCA 1987), which explained the common law rule:

> "[A] possessor of land is not liable to persons outside the land for a nuisance resulting from trees and natural vegetation growing on the land. The adjoining property owner to such a nuisance, however, is privileged to trim back, at the adjoining owner's own expense, any encroaching tree roots or branches and other vegetation which has grown onto his property."

Scott, 41 So.3d at 989 (quoting *Gallo*, 512 So.2d at 216) (alterations in original).

The *Scott* court recommends the adjoining property owner engage in self-help to combat encroaching vegetation by suggesting the landowner resort to trimming. By doing so, this leaves an open question as to what other methods of self-help are available. It is not clear whether the adjoining property owner may spray encroaching vegetation with herbicide such as glyphosate, which could translocate and kill the entire plant. Alternatively, the adjoining property owner may wish to use a stump grinder to destroy roots that have encroached onto their property. It is not clear whether these or other self-help methods are permitted, or whether employing them would create a cause of action against by the encroaching landowner against the encroached landowner.

Which landowner is responsible for dead or live trees falling on adjoining property?

The health of the tree may determine which landowner is responsible for damages to property. Florida Jurisprudence—a secondary source—provides that where a dead tree falls on an adjoining property and damages that property owner's home, the landowner who owns the property where the tree originally was located is responsible for damages. 1 Fla. Jur. 2d *Adjoining Landowners* § 8 (2022). Alternatively, Florida Jurisprudence provides that where a live tree falls on an adjoining property and damages that property owner's home, the adjoining property landowner is responsible for damages. Put another way, consider Landowner A (property owner of tree) and Landowner B (adjoining landowner). If Landowner A's dead tree falls on Landowner B's property, Landowner A is responsible for damages. Conversely, if Landowner A's live/living tree falls on Landowner B's property, Landowner B is responsible for damages.

However, there is no case law discussing the live/dead tree distinction discussed in Florida Jurisprudence. Florida Jurisprudence is not binding authority and a court may disregard it when adjudicating a case. Under a negligence theory, one could argue that a dead tree is a hazard that could cause foreseeable damage to a neighboring property. In other words, it is foreseeable that a dead tree will fail (especially during a storm), which creates a common law duty of care to remove the dead tree to in order to prevent damage to neighboring property. Under this theory, the duty to remove trees may not be limited to dead trees, but may also include live trees with a high risk of failure such as trees with co-dominant leaders and girdling roots. As of this writing, there is no case law on point discussing the duty owed by landowners to remove dead/hazardous trees to prevent damage to neighboring landowners. It will be up to future courts to decide this point.

A case touching on this lack of precedent is *Balzer v. Ryan*, 263 So.3d 189, 191 (Fla. 1st DCA 2018), which considered "whether the adjoining property owner is liable to the tree owner when the self-help remedy authorized by *Gallo* causes damage to the tree." As the court noted, there is "no Florida case addressing the issue." *Id.* In the absence of controlling precedent, the First District upheld the circuit court's ruling that Balzer "had no cause of action . . . if the tree was damaged when Ms. Ryan exercised her 'privilege' to cut the roots encroaching onto her property," even though cutting the roots "undermined the tree's structural integrity and increased the risk that the tree might someday fall" on Balzer's house. *Id.* at 190-91. Still, there remains is no case law on point discussing the duty owed by landowners to remove dead/hazardous trees to prevent damage to neighboring landowners

Summary

A landowner is not liable to the adjoining property owner for an alleged nuisance caused by overhanging branches and roots from a tree on his or her property; however, the adjoining property owner is legally entitled to trim back, at the adjoining owner's own expense and only up to the property line, any encroaching tree roots or branches and other vegetation that had grown onto his or her property. If the branches or roots are dead, or a dead tree falls onto the adjoining landowner's property, then the landowner of the property where the tree was originally located may be responsible. If a live tree falls onto the adjoining landowner's property, then the adjoining landowner is responsible for any damages.

Further Information

Handbook of Florida Fence and Property Law
https://edis.ifas.ufl.edu/entity/topic/BOOK_Florida_Fence_and_Property_Law