Indiana Arborist Association
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TREES AND THE LAW IN INDIANA
Topics of Presentation

• Whose Tree Is it?

• Rights and Responsibilities for Tree Care

• Trees that Encroach onto Other’s Property
• Liability for Falling Trees

• Trees Near Public Roads

• Trees and Utility Lines
- Tree Trimming Standards
- Tree Valuation Issues
- Protecting Yourself and Your Business
Law of Nuisance

Indiana law requires landowners to reasonably use and maintain their property so as to not interfere with a neighbor’s use and enjoyment of his own property.
This rule applies to noise, artificial light, odors, soot, water, vibration, trash, animals, etc. that leave the offending owner’s land and enter upon neighboring land causing harm.

No reason trees should be treated any differently.
Ancient Lights Doctrine

Under the English common law, natural air and light were considered to be a right incident to ownership of one’s land to be respected by neighboring owners.
But in Indiana, a landowner may plant or remove trees or vegetation on his own land as he pleases even if it might affect his neighbor’s scenic view or his access to natural light or air movement, even where the owner acts out of spite or maliciously.
Right of Lateral Support

A landowner has the right to have his land in its natural state supported by the land of an adjoining landowner.

Hence, excavation that might include tree removal which deprives adjacent land of “natural support” brings a risk of liability.
Trees vs. crops, grasses or flowers?

Legal test is whether they are cultivated annually.

If so, they are not trees but rather the personal property of the owner or occupant of the land.
Tree Ownership

Until severed from the land, trees are the property of the owner of the land where the tree’s trunk is physically located.

The location of its outstretched limbs or its underground roots is immaterial to the issue of ownership.
Jointly-Owned Trees

Trees where the trunk straddles the boundary line between two parcels thereby resulting in joint ownership.

Neither owner may remove or injure the tree without the other’s consent. Even minor trimming should not occur until communication occurs between the owners as to resolution of the dispute.
Be careful!

Relying on information from your client as to location of boundary line

How protect yourself?
Tree Care and Maintenance

Absent an enforceable agreement shifting them elsewhere, the rights and obligations with respect to care and control of the tree belong to its owner.
Trees with limbs extending across the property line

The tree’s owner has the absolute and exclusive right to either keep or remove the tree, even if its limbs overhang another’s property or provide shade, enjoyment or value to the neighbor.
Rights of the affected neighbor?

The neighbor has no right to remove or destroy another person’s tree, even if it sheds unwelcome debris onto his land, blocks his view, or otherwise causes annoyance or harm.
But the affected neighbor may trim the encroaching limbs and branches back to the line (provided he doesn’t trespass onto the neighbor’s land) or he may bring a suit for damages resulting from the overhanging limbs, falling debris, etc.
Be careful!

Boundary lines are often in dispute.

Judges expect people to communicate before using “self-help.”
Liability for falling trees

Indiana law imposes on all landowners the obligation to use reasonable care in periodically inspecting and attending to trees that by virtue of their location or condition may pose a risk of harm to persons or structures on neighboring land.
Liability is not absolute; rather it is based upon proof of fault -- a failure to use reasonable care as would a prudent person under the same or similar circumstances.
Would a prudent person have been aware of or on notice of danger and taken steps that would have prevented foreseeable harm?

Normally an issue of fact to be decided at a trial.
Trees Near Roadways

Indiana law also imposes on landowners the obligation to periodically inspect and attend to trees that by virtue of their location or condition may pose a risk or harm to persons using the public roads.
Factors to be considered include:

- tree’s age, appearance, and condition;

- nature and degree of attention given to it over time;

- tree’s size and potential reach;
proximity to the roadway;

similar past incidents;

nature of the area - rural, urban or residential;

reliance on expert opinions
What a proper inspection would have revealed
Trimming Roadside Trees

Ownership will depend on whether tree is located on land owned in fee by the governmental authority or by adjacent landowner who must merely allow public use of the right-of-way.
By statute, Indiana public utilities have the right to locate and maintain their lines and equipment in the public road rights-of-way as long as they don’t interfere with the ordinary and normal use of the roadway or reasonable access by adjacent owners.
Indiana law permits utilities to trim trees located within the rights-of-way regardless of public or private ownership in order to maintain their system and achieve proper clearance from power lines.
When trees and power lines conflict

Trees interfere with the efficient and safe operation of an electric utility.

Frequent cause of power outages, especially during storms

Sometimes lead to power line contact injuries
But utilities may not cut the tree down without the consent of adjoining property owners unless the removal is required by rule or order of the Indiana Utility Regulatory Commission.
NESC Sec. 218

“Trees that may interfere with ungrounded supply lines should be trimmed or removed.”

Variety of factors considered in determining the extent of trimming required.
What to do with questionable trees?

• confirm your communications
• allow tree to remain subject to owner’s written waiver and promise of indemnity
• get it in writing
AGREEMENT REGARDING TREE NEAR UTILITY LINE

The undersigned, who owns the property at ___________________________ (property address), agrees with ___________________________ (name and address of utility) ("Utility") as follows:

A. A ___________________________ tree is located on this property near Utility's overhead power lines that provide electric service to this property and others in the area.

B. To reduce the potential for the tree interfering with the power lines as it grows or might be impacted by storms or other causes, Utility has offered to prune or remove the tree at no expense to the property owners. The property owners object to the tree being trimmed or removed and at this time wish it to remain as is. Utility will allow it to remain for the time being on the conditions set forth below.

C. Owners acknowledge their awareness that these overhead wires carry dangerous levels of electricity and they are not insulated or guarded with a protective covering. Activity in or near the tree, such as children playing in the tree or the use of metal ladders, poles, antennas, or other equipment around the tree, presents a danger of severe electric shock to anyone who may contact the wires, either directly or indirectly. Utility has encouraged the property owners to warn their family members, guests, and workers of this danger.

D. Because the tree does not presently interfere with the safe operation of these lines and it likely won't for several years, Utility is not requiring that it be removed or trimmed back at this time. But Utility may request that be done in the future if circumstances should change. The property owners shall immediately notify Utility if there is any change in activity around the lines or if the tree would grow into the lines.

E. In consideration of Utility's willingness to allow the tree to remain in its current condition and location, the property owners hereby RELEASE Utility and its employees or agents from any claims of any nature that the owners could bring for bodily injury, property damage or death allegedly caused by the tree's proximity to the power lines. The owners shall also INDEMNIFY AND HOLD HARMLESS Utility and its employees or agents from any claims in negligence of otherwise that a third party might bring for injury, property damage, or death, including the Utility's attorney fees in defending such claim, by reason of the tree's proximity to the lines.

CAREFULLY READ AND VOLUNTARILY SIGNED this ___ day of __________, 20___

Property Owner: ___________________________ Property Owner: ___________________________

_____________________________ ______________________________
Signature                          Signature

_____________________________ ______________________________
Printed Name                        Printed Name

Witnessed by on behalf of Utility ___________________________
Agreement signed by landowner that recognizes awareness of potential hazard, requests tree be preserved, and releases or provides for indemnity from liability in event of harm or damage.
IURC 2010 Tree-Trimming Proceedings

Initiated to consider property owner complaints regarding utility line clearance practices

Highlights of IURC order are:

Standardized trimming cycles and clearance practices and standards are not required; no one-size-fits-all approach
Utilities must follow ANSI A300, NESC, the Shigo Guide, and ISA Best Management Practices in the conduct of their vegetation management.
Permitted exceptions:
consent of the property owner,
during an emergency,
in the interest of safety, or
in the interest of preserving the life of the tree.
Sometimes existing easements or public rights-of-way are insufficient to provide proper line clearance.

What should be done?
The utility may not trim parts of tree that are located outside the scope of legal authority unless it obtains additional easement area or the consent landowner’s consent.
Utility must notify a customer in person or over the phone, with at least one form of written notice to the customer. These initial notices should occur at least two weeks before the trimming. Notice of line upgrades is also required.
Utilities are not required to allow landowners to self-trim their own trees.
Debris from routine utility maintenance must be removed in a timely manner (usually within three calendar days).

Removal of storm-related debris is the responsibility of the property owner, not the utility.
Trespass issues

Absent permission of the landowner or an easement or other right of access, neighbors and their agents, have no right to enter onto another’s land for the purpose of inspecting conditions on that property, trimming encroaching limbs, or otherwise.
Normally there is little likelihood of serious damage liability from trespass, but it’s best to show respect for another’s private property rights by making contact and seeking permission.
Tree Valuation Issues

How do Indiana courts determine the value of trees that are wrongfully damaged or cut down?

Growing trees are not personal property, but rather are part of the land on which they are located
In the field of tort law, the issue is Permanent vs. Temporary Harm

If the tree can be restored without economic waste, the measure of the owner’s damages is the reasonable cost of restoration.
If the tree cannot be restored or the cost of doing so would be greater than the value of the land with the tree in place, the measure of damages is the **diminished value of the land** by reason of the loss of the tree.
The “value” of the tree or its “replacement cost” is usually immaterial.
Insurance claim setting

The terms of the insurance contract will control

May allow actual replacement cost

Limitations on recovery

Deductibles apply
Protecting Yourself

Important to put the terms of your engagement in writing ---

Describe the scope of your professional obligations on your terms.

What are you agreeing to do?
What is not covered?
Limit your potential liability, if you so desire

Provide for indemnity where appropriate
Your liability for alleged failure to spot a danger tree --

Confirm your warnings and discussion

Limit your potential exposure as deemed appropriate
Incorporating Your Business

Absent incorporation, you will be personally liable for errors

Form a corporation or a limited liability company

Cost is minimal compared to potential exposure
Liability insurance

You have potential liability –
  to both clients and the public at large
  for both property damage and bodily
  injury or death

Insurance company will pay the liability and
the costs of investigation and defense.

Make sure coverage limits are adequate.
Responding to Claims

Be honest with everyone

Don’t be afraid to admit to being wrong

Take good notes of the facts

Avoid embarrassing comments
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