

FACTS ABOUT: TREES



Northern Territory
Legal Aid Commission

This fact sheet is designed to help you work out what to do if your neighbour has an overhanging tree or a tree that is a problem in some way.

There are five possible steps you can take to solve the issue:

1. Talk to your neighbour;
2. Get help from a mediator;
3. Cut the tree yourself;
4. Write a letter before taking legal action;
5. Go to the Local Court.

Step 1: Talk to Your Neighbour

As with any other dealings with your neighbours it is best if you can arrange a meeting when you both have time in order to:

- State clearly how you see the problem;
- Listen to what your neighbour has to say;
- Work out how the problem can be solved.

If a neighbour's trees are overhanging your fence or if the roots are intruding onto your property in such a way that there is an ongoing, unreasonable interference with your enjoyment of your property, then the law says this is a "nuisance".

You are entitled to take action to stop that nuisance. You will normally get a much faster and cheaper result if you simply offer to help them cut down the branches or dig up the roots if necessary.

Tree owners do not have responsibility simply for leaves falling on their neighbour's land unless they cause damage or injury and have fallen branches overhanging the boundary.

Step 2: Get Help From a Mediator

It is difficult to talk with your neighbour about the problem on your own. It can help to seek assistance from a mediator. A mediator simply helps to guide discussion between you and the person with whom you are having a problem. They do not decide who is right or wrong and they cannot impose a decision on you in the way that a court can. For more information you can contact the Community Justice Centre on 1800 000 473.

Note: Put it in Writing. It is a good idea to put any agreement you reach in writing. State clearly what you agree to (type of action to be taken, by whom, amounts of money to be paid and completion date). Don't forget to sign and date your agreement.

Step 3: Cut the Tree Yourself

If all attempts at coming to an agreement with your neighbour fail, you have the right to cut off branches or roots that extend over the fence line of your property. The law does not require you to notify your neighbour as long as you do not enter their property. Still, it is probably best to let your neighbour know that you are going to exercise your legal right to cut down the overhanging parts of the tree and ask them if they want the remains back.

The law says that any branches, roots or fruit which you cut off must be returned to your neighbour. You must be careful not to cause any damage when returning branches etc to your neighbour's garden.

You will have to pay for the removal of bigger branches or roots, unless your neighbour agrees to help with the cost, or a court orders that these costs be paid.

Step 4: Write a Letter Before Taking Legal Action

Because going to court will take time and money to get a result, it is best to first write a letter to your neighbour. The letter should state that it is their legal responsibility to fix the problem with the tree and that if they don't do this within a certain amount of time, you intend to take them to court.

Step 5: Go to the Local Court

This should be your very last resort. Taking any sort of legal action can be an expensive and long drawn out process. It is unlikely to help your relationship with your neighbour in the future. If at all possible, aim to come to some agreement without going through the court system.

If the tree owner is unwilling to pay the cost of repairs or compensation, you can request a court to order payment by making a Small Claim in the Local Court. A Small Claim is a claim for an amount of money up to \$10,000 or a work order (an order that a defendant perform work, return, repair or replace goods).

The court action can be brought on the basis of:

- Nuisance; or
- Negligence.

To establish nuisance you must be able to prove that:

- The tree causes an ongoing, unreasonable interference with the enjoyment of your property; and
- You are a tenant or owner of the land that the tree is overhanging; and
- The tree owner can control the interference.

If a nuisance is established, the court can order the tree owner to pay the costs of repairs caused by the tree (eg: cracked pipes or damaged gutters) and/or the cost of removing the branch, roots or tree.

Under the law of negligence, compensation is only available if you can prove that:

- Actual physical damage has occurred;
- A reasonable person could foresee that the damage was likely; and
- Reasonable care was not taken to avoid it.

It is very difficult to establish that damage caused by falling trees or branches is the result of negligence on the part of the tree owner, unless it can be shown that the danger had previously been drawn to the owner's attention and that the owner had failed to do something about it.

Call the Legal Aid Helpline on 1800 019 343 if you would like information on making a Small Claim or need an appointment for legal advice.

Contacts

Northern Territory Legal Aid Commission
Call the Helpline toll free **1800 019 343**
www.ntlac.nt.gov.au

Darwin
6th floor, 9-11 Cavenagh St, Darwin

Palmerston
Shop 6, Goyder Centre,
25 Chung Wah Terrace, Palmerston

Katherine
20 Second Street, Katherine

Tennant Creek
Shop 3, 163 Paterson St, Tennant Creek

Alice Springs
77 Hartley Street, Alice Springs

Non-English speaking people can access the Legal Aid Helpline by calling the Translating and Interpreting Service (TIS) on 13 14 50 and asking for the interpreter to connect them to Legal Aid on 1800 019 343.

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Disclaimer: This content is provided as an information source only and is not legal advice. It is correct at the time of publication but laws change. If you have a legal problem you should seek legal advice from a lawyer.