

# Kimball, Tiley & St. John LLP

## Nuisance Trees

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**The tree which moves some to tears of joy is in the eyes of others only a green thing that stands in the way. . . . - William Blake, 1799, *The Letters***

Two neighbors can feel very differently about the same tree. A tree that one property owner considers an asset may be a nuisance to his neighbor because of fire risk, a blocked view, overhanging branches or invasive roots. Property owners often call Kimball, Tiley & St. John LLP for information about their legal rights and responsibilities when dealing with these issues.

Before advising clients, it is important that the attorney know where the tree trunk is located. If the tree trunk is on the property line (so that the trunk is on the land of both property owners), it is known as a "line" tree. Both property owners own line trees. ([California Civil Code §834](#)). Neither owner has the right to cut down a line tree or to remove any portion of a line tree extending onto his land without his neighbor's consent, even if the tree is causing damage.

If the tree trunk is not on a boundary line, the tree belongs to the person owning the land where the tree trunk is located, even if the branches and/or roots encroach onto his neighbor's land. ([California Civil Code §833](#)).

In determining each neighbor's rights and obligations, one should remember the basic rule of California law that each person must avoid harming others. This means each neighbor should act to avoid harming his neighbor.

A tree owner must maintain his trees to avoid injury to his neighbor's property. Under some circumstances a tree owner can be held liable for damage caused by falling branches and/or invasive roots.

A neighbor damaged by an encroaching tree can use self-help or court assistance. The unhappy neighbor can remove encroaching portions of a tree causing damage if removal is reasonable under the circumstances. To avoid liability, the tree trimmer should consider whether there are less drastic measures he could take to avoid the damage to his property, his neighbor's property, the tree, and his neighbor's tree. The neighbor can cut back the tree only to the boundary line.

A person who willfully and maliciously removes a tree without the legal right to do so can be held liable for double or treble damages. ([California Civil Code §3346](#), [California Code of Civil Procedure §733](#)). The damages can include elements such as diminution in value, loss of aesthetic value and shade, and tree replacement costs. If the tree must be replaced, and is so large that a replacement of like size is not available, the damages may include the cost of "tree care" for years, until the replacement tree reaches the size of the originally damaged or removed tree. The court can also award attorney's fees.

Unless given permission or a court order, a person should not enter onto his neighbor's land to trim or remove an offending plant. ([California Penal Code §602](#) specifies that willful trespass on the land of another causing injury to trees is a misdemeanor.) If the unhappy neighbor doesn't want to remove the encroaching portions of the tree himself, he can file an action to recover damages caused by the tree and/or to seek injunctive relief (i.e. a court order requiring his neighbor to take some action regarding his tree.)

A neighbor's tree cannot generally be removed because it blocks a view. In California we do not have "view easements" unless specifically granted. View easements, if they exist, are generally established through recorded easements or CC & R's.

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