

If a Tree Falls...

By Robin Manougian

The old saying goes, "If a tree falls in the woods, and no one is around to hear it, did it make a sound?" Trust me, it makes a sound, and the ruckus it causes is more than audible when the tree falls onto someone's property, though bickering and a litany of frustrated questions are, most likely, the sound you'll hear.

Following Hurricane Isabel's wrath in September 2003, it was only natural that property owners inundated insurance claims offices with calls about downed trees, and the mess Isabel's gale-force winds left behind. But moreover, the financial question of who would come and remove the uprooted trees and limbs became a hot topic among Washingtonians, since virtually no county or jurisdiction was left untouched.

Insurance policy language is clear about tree damage: If a tree falls onto covered property (a home, a building, a common area structure, a car), the carrier will pay to repair or replace the damaged property (less the policy's deductible), *as well as the cost to remove the tree*. The issue becomes more confusing when the tree simply falls to the ground, and what most of those who are insured don't realize is that an insurance policy won't pay to clean up a fallen tree that simply falls and leaves behind a big mess. The reason is simple: Insurance carriers view fallen trees as maintenance issues and not insurance claims, and if covered property wasn't damaged by the fallen tree, and the tree simply falls, or is

brought down by an "act of God", such as a hurricane, the cost to remove the tree is the responsibility of the owner of the property.

This leads us to our next point: Whose tree is it? Home and business owners understandably cry foul when a tree that sits on someone else's property falls onto their own. The inclination is to knock on the neighbor's door and tell him to come over and retrieve his tree. Unfortunately, what was once your neighbor's tree now has become your tree – your property – and your mess to clean up after.

An easy way to remember who pays for something following a loss, is that the owner of the damaged property pays:

- If the tree belongs to you and falls onto your own property, but didn't damage any covered (insured) property, you pay to have the tree removed.
- If the tree belongs to you and falls onto and damages insured property, your insurance covers the loss, less your policy's deductible.
- If the tree belongs to you, and it falls onto your neighbor's property, the neighbor pays to have the tree removed.
- If the tree belongs to you, and it falls onto your neighbor's property and damages the neighbor's structure(s), the neighbor's insurance policy responds to the claim.
- If a tree falls onto a vehicle, whether your own or someone else's, the owner of the damaged vehicle's auto insurance policy responds to the

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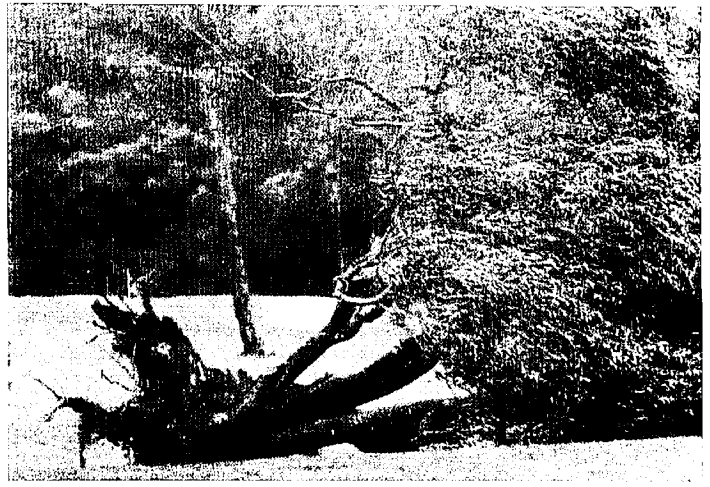
Certainly, it's nice when neighbors are neighborly and are willing to share in the cost of removing a tree that's fallen, but legally speaking, the above points are how such issues are handled.

Further, should a live tree be struck by lightning (a covered peril), and fall onto common ground, the Property policy would pay for the tree subject to the policy limits, but generally not for the removal of the tree.

In homeowners associations, should a tree in the common area fall onto an individual home, the homeowner would seek recovery from his or her homeowners' policy, including the cost to remove any debris. The association's policy would not be responsible for the cost of repairs to individual homes, but damage to the tree owned by the association would be covered provided the tree was damaged by a covered peril.

Another issue that must be taken into consideration is whether a property owner really should file a claim, even if covered property has been damaged. First, there's the matter of the deductible that needs to be met before the policy will respond to a loss: Will the damage exceed the deductible, and second, if it does is it really worthwhile to file a claim that may or may not pay much, but will harm the claims experience of the owner? If the damage is minimal, it's highly advisable to self-insure small losses. Insurance carriers and agents alike, wish to impress upon those who are insured that insurance is for catastrophic loss. Minor losses, filed with frequency, add up to create a history that can come back to haunt you in terms of renewing and purchasing insurance coverage for your property.

The final point involves assigning negligence, if negligence even exists or can be proven. The "general rule," according to Benny L. Kass of Kass, Mitek & Kass, PLLC, in Washington, D.C., "is that if your tree falls on your neighbor's property, even if it causes injury to person or damage



This fallen tree creates a real cleanup mess – but not an insurance claim.

to property, you will not be liable if you were not negligent." (see the accompanying article by Kass, "It Might Be Best to Decide Yourself Whose Tree Did What to Whose Property.")

The "Natural Property" section of a community association's insurance policy should be examined for limits, perils insured against, and exclusions. Where increased coverage limits may be necessary to adequately insure live property, so too, is the need for adequate maintenance and risk management of natural property so that the risk of loss to people and property is minimized. **Q**

Robin Manougian is an insurance agent with the John Manougian Insurance Agency, Inc., in Silver Spring, Md. She is also Co-chair of the Publications Committee.

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