

# THE LAW OF TREES

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In the law, a tree can be either public or private property. It can be real or personal property, depending on the circumstances. Trees are funny that way. They depend.

A tree's status depends on where it's located. If it's in the public right-of-way--that area usually three rods in width that is controlled by the town for highway purposes--it isn't yours to cut and split into cordwood without permission of a public official. Town officials can, if they think it right, remove the tree and leave you the wood, unless they can figure some way to use it in the building of the highway.

A tree's status also depends on its health. If a tree has a disease that can infect other trees, public officials also have authority to spray it, cut it down, and burn the wood to protect other trees in the area.

Trees have been around much longer than any law, but the traditions and understandings of people toward trees have been translated into law in ways that every landowner ought to understand. This brochure is intended to give you an idea of how the law treats trees, and to describe your rights and duties toward our leafy friends.

## The Players

Let's meet the people who administer the law of trees in Vermont.

Every town ought to have a **tree warden**, as the law requires one to be appointed annually by the select board. The statutes devote an entire chapter to the office. The domain of this official includes all shade and ornamental trees within the limits of the public ways and places. Tree wardens decide when old trees should come down and when new trees should be planted, what pest control measures are needed and where to prune. They may enact ordinances for the planting, protection, care or removal of public shade trees. It's important to appoint someone with a good background in the subject to this office, one who is both familiar with the science of trees and who

will serve as an advocate for them in an official capacity.

The **select board** hears appeals from decisions of the tree warden. It has no authority to interfere with this officer if no one appeals. The **voters** approve budgets that raise money for caring for these trees. The **town road commissioner** has continuing responsibility for maintaining the public rights-of-way.

The **private landowner** is bound by the law to work with the tree warden to ensure the health and preservation of public shade and ornamental trees.

The **Commissioner of Forests, Parks and Recreation** has a continuing role in assisting communities and landowners to keep forests healthy, and operates a cost-sharing program for the planting and maintenance of trees by towns through the town tree warden. The **Commissioner of Agriculture** recommends control meas-

## The Anomaly of the Bee Tree:

Shortly after the Civil War, a man found a bee tree on his neighbor's land. He visited the neighbor and told him about his find and his intention to remove the honey. The neighbor told his cousin about the tree. With the neighbor's permission the cousin went looking for the tree, found it, and took the honey for himself. The original finder then sued for damages, claiming he was entitled to the honey.

He was, even though the tree was not on his own land. The common law recognized his rights as first finder of a bee tree. The Vermont Supreme Court acknowledged his right to cut it down, even without asking permission, and take the honey for himself.

Whether this is still good law in Vermont is unclear, but the story illustrates how curious the law of trees can be. The usual rules of private property ownership do not always apply. Trees have a special status in the law. All landowners ought to know their rights and those of their trees.

## The Players *(continued)*

ures to protect public trees from infestation and authorizes the tree warden to take the necessary steps to save these trees.

**Utilities**, including power and telephone companies, also have rights within the public right-of-way. With permission from the town they may prune or cut trees that interfere with lines and poles along the roadside.

**Law enforcement officials** enforce the laws making the cutting of trees on other people's property or within the public right-of-way a crime.

## Defining "Shade and Ornamental Trees" and Other Terms

The term "shade and ornamental trees" appears throughout the law of trees, but the law does not define the term. A public shade tree provides shade to people using public places, including roads, the town commons, and public institutions. An ornamental tree is one that is cultivated for decorative purposes. Neither shade or ornamental trees are limited to particular species or trees of a particular age or size. Assume that any tree or shrub within the public right-of-way or in a public place is protected by the law. Don't try to be sly with definitions to get around the law.

The public right-of-way is an easement that allows the public to walk and ride across private property. Highways are the most obvious public rights-of-way, but the term also includes public trails. The public right-of-way is usually three rods wide (49 1/2'), but in some cases may be wider, depending on the original action of the town in laying it out. Within the right-of-way, public officials may take any action necessary to ensure safe travel by the public.

Public places include cemeteries, greens, parks, and the

lawns surrounding public buildings. Often these properties are owned outright by the town, but the rules on cutting and pruning shade and ornamental trees apply as forcefully there as in the road right-of-way. This means that other town officials -- the road crew, the town clerk, the cemetery commissioners -- must consult with and gain the written approval of the tree warden before cutting or pruning trees in these public places.

## Finding the Law

The law relating to town tree wardens is found in Title 24 of the Vermont Statutes Annotated, Sections 2502 through 2511. The law on tree crimes (crimes involving the cutting of trees, that is) is in Title 13, Sections 3601 through 3609. The town clerk can show you how to find these laws and make copies of them for review.

Most of the law relating to trees is common law, meaning that it is found in court cases, many of them from the earliest reported decisions of the Vermont Supreme Court. You should visit the State Law Library for references to these cases, or contact the Vermont Institute for Government for further help.

The purpose of the law is to mediate between the interests of the public and those of private landowners whose property includes public shade and ornamental trees. The public's interests include safe travel, provision of utilities, shade and beauty, calming of traffic, and neighborhood preservation. Private interests include the maintenance of a buffer between living areas and the public highway, creation of a view of the land beyond the boundary of the property, and the ability to choose the design and look of a private residence.

## Trespass?

At this point, owners of real property are wondering just how private property really is, especially as it relates to trees in the public right-of-way. What are your rights and obligations? Here is a short list:

1. The right to a public hearing. The decision to cut down public trees is made by the tree warden only after a public hearing. You may attend. You may appeal the decision to the select board to overturn the tree warden's decision.

2. The right to the lumber cut, except in the remote instance where the public official needs the lumber to construct the road or bridge. The town should at least offer you the trees it cuts.

3. The obligation to allow the tree warden access to your land to conduct control measures against infestation.

4. The obligation to obtain permission from the warden before you cut or plant any tree or shrub within the public right-of-way.

And the penalty for failing to conform to the law on public trees? You can be fined for cutting (or "injuring") a public shade tree without written permission of either the tree warden or the select board, up to \$500 for each tree.

Before controversy develops, a town might think seriously about adopting a policy on public shade trees. By establishing a protocol for tree maintenance and removal, the town can avoid the accusation that the landowner has been singled out for special treatment and provide for regular care and tending of these important resources. There's a public protection advantage with such a program, since it is possible that a town might be found liable for failing to maintain public shade trees that cause traffic accidents. If the record shows the town has done nothing to fulfill this responsibility, it may create difficulties in waging a proper defense if a lawsuit develops.

## Boundary Lines

Trees often serve as boundaries between lots. Early deeds frequently refer to a beech tree or an elm tree as a corner or side boundary marker. A special set of laws, most of them established by courts as part of the common law, have grown up around such trees.

A tree sometimes is a monument, establishing a corner in the description of conveyed land. Those trees are owned jointly by the owners of the land on either side of the line, and cannot be cut without permission of both owners.

Trees near a boundary tend to hang over the line or grow troublesome roots that invade foundations or driveways. Those landowners affected by the alien tree are authorized by law to cut the offending branches or roots and sometimes win damage suits against the owners of the trees, especially when a tree, obviously diseased, falls on the neighbor's house or car.

Trees on or near the boundary of the public right-of-way create special problems of control. Hanging branches can cause traffic safety problems; roots can damage the road bed. In close cases, we think the best plan is to consult with the tree warden, just to be sure.

The fruit falling from a tree onto a neighbor's property is often falsely regarded as belonging to the neighbor, but the neighbor's rights only include to the removal of the offending fruit when it interferes with the neighbor's property, not to the general enjoyment of any apple hanging invitingly on a limb over the line. If the trunk is on your land, your neighbor can't pick the fruit, even on overhanging limbs, without your permission.

If a tree on someone else's

property grows tall and wide and blocks your view, you have no right to complain. The English common law doctrine of *ancient lights* does not apply in Vermont, and the only way you can legally ensure the continuation of your view is to obtain an easement from your neighbor. This is usually created by deed, allowing you to cut portions of the trees on your neighbor's property that interfere with your view of the valley or mountains beyond.

## Timber

Cutting wood on your own land is an act of ownership; cutting it on the land of another is a trespass. If you cut or deface a tree belonging to someone else by mistake--maybe you think the trees are on your land--you owe the landowner the value of the timber taken. If you do it knowing the trees aren't yours, you pay treble damages--three times the value of the wood taken.

Suppose you cut somebody else's trees, load them on your truck, and then are stopped by a police officer who suspects you've stolen them. The law has something special for you too. The officer may stop you and ask for a bill of sale or some writing showing your rightful possession, and if you don't have one, that's enough evidence to convict you of a crime for which you may be imprisoned up to six months or fined not more than \$300 or both. Of course, if you can show where you obtained the trees or how you had a license or authority to cut them, you may be found innocent.

This law is particularly important for those who during

the holiday season cut Christmas trees and tie them to their cars to bring them home. A bill of sale is an important defense to arrest and prosecution.

Then there's adverse possession, the statutory right to land you haven't purchased. If you've used the land openly and continuously for at least fifteen years, in spite of the rights of its original owner, you may persuade a court to recognize your right to the land. It's not easy to generalize about adverse possession, but it's enough for our purposes to tell you that it's possible under the right circumstances.

A majority of Vermont towns own and maintain municipal forests. In some cases these forests are available to residents for harvesting firewood, in others the common use is as a public recreational area. Check with the town clerk to learn what your rights are in your municipal forest.

## The Bundle of Rights

The mantra of property law is simply stated--property is a bundle of rights, among them the right to sell and use land and everything growing on it. You can convey a right-of-way to your neighbor if you like, dividing off one of the pieces of the bundle, and that authorizes your neighbor to cut whatever trees are found along the way to make the road.

You can also convey timber rights to your land, while retaining the rest of the property. The problem is what use you have left. Your use of the land will then be limited to those portions not forested. Arguably you can't even pull up saplings without permission of the owner of the timber rights, even on your own front lawn.

Owners of land abutting

**Why Appoint a Tree Warden?** Every town will benefit from the appointment of a tree warden, if someone good can be found who will take the position seriously. Trees need someone looking out for their interests, and the whole community benefits from this work. You don't need to have a forestry degree to qualify. All it takes is an interest in trees and a willingness to provide a public service to your town. Once appointed, you can obtain more information about trees and your duties as tree warden from the Department of Forests, Parks and Recreation. Talk to select board members if you're interested, and show them this pamphlet.

## **The Bundle of Rights** (continued)

public highways have not lost their interest in the land if the town has a right-of-way, but their rights to use that land are severely limited. Although the trees still belong to the landowner, there is no private right to cut them down, without a public hearing.

The tree warden can't just cut any tree either without a public hearing, unless the trees are diseased and dying. But the warden can plant trees and shrubs within the public right-of-way for the purpose of shading and beautifying the public ways and places, without the need for a hearing or the permission of the landowner.

Suppose, however, the tree warden cuts a tree (not dying or diseased) growing in the right-of-way without a hearing. The landowner may sue for damages against the officer individually, as that warden would be acting outside the scope of authority.

The bundle of rights is tied securely with the rope of public law, always in the name of public protection. Public protection goes a long way these days. In 1997, the legislature first regulated heavy cutting of Vermont land over forty acres at a time. Now you need the authorization of a state forester to cut that much at one time.

## **Curiouser**

The law of trees is an odd assortment of rules and principles, many of which stretch traditional notions of private

property to the limit. A closer examination reveals a thread of common sense running through the whole canon of tree law in Vermont. It makes sense that some official should have the say on whether trees in public ways are cut or planted, for the sake of public safety and aesthetics. It makes sense that trees should be respected by the law as a species of property subject to special protections from intruding neighbors and meandering loggers and that landowners should know where their property ends and another's begins and be held to a high standard of liability for knowing violations.

## **A Word about The Vermont Institute for Government**

The Vermont Institute for Government (VIG) is a nonprofit corporation dedicated to improving educational opportunities for local officials and the public on how government works. It consists of representatives from each of the major groups in Vermont that offer such training.

The VIG has published other pamphlets that may be of use or interest to you. They include:

- *The Meeting Will Come to Order*, covering town meeting procedures.
- *Changing the World*, about how to increase your effectiveness in meetings of local and state boards and commissions.
- *Are You Appealing?*, which covers the tax grievance and appeal processes at the local level.
- *Isn't This My Land?*, relating to local planning and zoning.
- *The Vermont Citizenship Comprehensive Examination*, a fun test of basic information a citizen ought to know about Vermont government.
- *The Public Right of Way and You*, covering town highways.
- *How and Why to Read a Town Report*, it can tell you a great deal about your town.
- *It's Your Turn: A Call to Local Office*, how to get involved in your local government.
- *Reforming Local Government by Charter*, how to change your local government.
- *The Development Review Board*: Strengthening the planning and zoning functions.

Contact the VIG office for free copies of any of these pamphlets or to learn more about VIG.

### **Vermont Institute for Government**

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