



Trees and Legal Considerations



Working With Contractors



Licensing



- ▶ In order to sell tree services (pruning, removals, plant health care treatments, and consulting) a company must be listed as a Maryland Licensed Tree Expert (LTE). This is proof of both knowledge and insurance.
- ▶ This protects you should something go wrong during work, as the company's policy will deal with any damage. If the company or individual doing work for you is not licensed, there is the possibility of any damages going on your homeowner policy.
- ▶ You also have channels for grievances if the company is an LTE, as the Maryland Department of Resources accepts LTE complaints.
- ▶ A legitimate company will provide you with an LTE number, and it can generally be found on any estimates they give you as well as on their trucks.

Licensing Continued



- ▶ In order to apply any pesticides, a company must carry a Maryland Department of Agriculture Pesticide License.
- ▶ This proves again that the company follows safety training protocols for application and storage of pesticides. This is required even for relatively common pesticides that homeowners have access too (such as Roundup).
- ▶ Again, the company will provide you with an MDA license number on documents, and it will typically be listed on any vehicles involved in pesticide applications.
- ▶ Improper pesticide applications can cause damage to your property or health, so insure that the company carries this license. You will have recourse with the state

Certifications



- ▶ Arborists are certified through the International Society of Arboriculture. The basic certification is “Certified Arborist”. There are many additional levels and paths of certification an arborist can choose after this, the highest level being Board Certified Master Arborist.
- ▶ An arborist does not have to necessarily work exclusively with trees. Often landscape architects, city planners, or nursery workers are also certified arborists.



Certifications Versus Licenses



- ▶ Please note that a certification is NOT a license from the state. Certifications represent that an individual has met knowledge requirements on the international level, but this does not mean they meet legal requirements of the given local area.
- ▶ Certifications can be a good determining factor when choosing between licensed companies or consultants.
- ▶ Some individuals are also listed as Registered Consulting Arborists from the American Society of Consulting Arborists. Again, this is not a license.

Get multiple estimates

- ▶ Prices can vary quite a bit between different contractors depending on staffing, equipment, and expertise.
- ▶ Try and avoid feeling pressured by urgency when talking with a contractor. As the concern is generally protecting your property, it can be easy to assume that any tree work needs to be done “immediately”. Unless you have been notified of an “imminent hazard,” this is typically not the case.

Getting Along With the Neighbors



“I need you to come tell my neighbor to cut down their tree”

- ▶ The response you can expect to receive is “Here is my hourly rate for legal testimony as an expert witness.”
- ▶ It is very, very important to notify and discuss any tree work or tree concerns with your neighbors. This can save you a lot of legal headaches down the road.
- ▶ This will be repeated: A tree owner whose tree is “unreasonably” damaged by any act by their neighbor or contractor may seek compensation. This includes if you are digging on your property and you damage the roots of their tree to the point it kills the tree.

Boundary Trees and Trees Growing Over Property Lines

- ▶ Trees that are close enough to the property line that the trunk is split by it are considered boundary trees. You cannot remove a boundary tree without both owners consenting.
- ▶ As a homeowner, you may legally prune any branches that are on your property back to the property line. Here is the difficult part: To properly prune a tree, you generally will need to go beyond that point, so discuss with your neighbor if you may access their property. Do not trespass. Get it in writing too.
- ▶ Any act that damages an homeowner's tree may entitle them to compensation (More on that later.)
- ▶ Arborists or tree contractors hired by you will be very hesitant to enter your neighbor's property unless they have written permission.



“My neighbor has a hazardous tree and they won’t act, what do I do?”

- ▶ Courts often apply the *reasonable care standard* when determining liability. If a layperson could determine that a tree or branch was hazardous, then it is possible that the tree owner can be held liable for any damage. This means your first step should always be to **Notify**. Notify the neighbor in writing, and maybe notify your municipality as well. The first question an insurance company is going to ask a policy holder in this situation is “Were you aware?”
- ▶ Property owners typically have *duty of inspection* to make sure they are aware of hazardous conditions.
- ▶ Damage caused by trees not known to be previously hazardous are considered Acts of God. This is almost always the case with storm related damage.
- ▶ You may need to pay the initial costs of cleaning up storm damage on your property, but you should immediately submit a claim to you insurer.

Tree Risk Assessment

- ▶ One option for your own trees (or your neighbors if they agree to it) is to have a tree risk assessment performed by an arborist.
- ▶ A tree risk assessment analyzes all of the components of a tree, potential defects, targets, chances of impact, and consequences of impact.
- ▶ Using all of this information, they can make a recommendation on the potential risk rating of a tree, ways to mitigate this risk, and what risk will remain after
- ▶ There is generally a cost associated with this.

ISA Basic Tree Risk Assessment Form

Client _____ Date _____ Time _____
Address/Tree location _____ Tree no. _____ Sheet _____ of _____
Tree species _____ dbh _____ Height _____ Crown spread dia. _____
Assessor(s) _____ Time frame _____ Tools used _____

Target Assessment

Target number	Target description	Target zone	Occupancy rate	Resulted in move target?	Resulted in removal?
		Target zone	1 - none 2 - occasional 3 - frequent 4 - constant		
1					
2					
3					
4					

Site Factors

History of failures _____ Topography Flat ☐ Slope ☐ _____ % Aspect _____
Site changes None ☐ Grade change ☐ Site clearing ☐ Changed soil hydrology ☐ Root cuts ☐ Describe _____
Soil conditions Limited volume ☐ Saturated ☐ Shallow ☐ Compacted ☐ Pavement over roots ☐ _____ % Describe _____
Prevailing wind direction _____ Common weather Strong winds ☐ Ice ☐ Snow ☐ Heavy rain ☐ Describe _____

Tree Health and Species Profile

Vigor Low ☐ Normal ☐ High ☐ Foliage None (seasonal) ☐ None (dead) ☐ Normal ☐ _____ % Chlorotic ☐ _____ % Necrotic ☐ _____ %
Pests _____ Abiotic _____
Species failure profile Branches ☐ Trunk ☐ Roots ☐ Describe _____

Load Factors

Wind exposure Protected ☐ Partial ☐ Full ☐ Wind funneling ☐ _____ Relative crown size Small ☐ Medium ☐ Large ☐
Crown density Sparse ☐ Normal ☐ Dense ☐ Interior branches Few ☐ Normal ☐ Dense ☐ Vines/Mistletoe/Moss ☐ _____
Recent or planned change in load factors _____

Tree Defects and Conditions Affecting the Likelihood of Failure

— Crown and Branches —

Unbalanced crown ☐ LCR _____ % Cracks ☐ _____ Lightning damage ☐
Dead twigs/branches ☐ _____ % overall Max. dia. _____ Codominant ☐ _____ Included bark ☐
Broken/Hangers Number _____ Max. dia. _____ Weak attachments ☐ _____ Cavity/Rest hole _____ % circ.
Over-extended branches ☐ _____ Previous branch failures ☐ _____ Similar branches present ☐
Pruning history Crown cleaned ☐ Thinned ☐ Raked ☐ Dead/Missing bark ☐ Cankers/Galls/Burls ☐ Sapwood damage/decay ☐
Reduced ☐ Topped ☐ Lion-tailed ☐ Conks ☐ Heartwood decay ☐
Flush cuts ☐ Other _____ Response growth _____
Main concern(s) _____

Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

— Trunk —

Dead/Missing bark ☐ Abnormal bark texture/color ☐
Codominant stems ☐ Included bark ☐ Cracks ☐
Sapwood damage/decay ☐ Cankers/Galls/Burls ☐ Sap ooze ☐
Lightning damage ☐ Heartwood decay ☐ Conks/Mushrooms ☐
Cavity/Rest hole _____ % circ. Depth _____ Poor taper ☐
Lean _____ Corrected? _____
Response growth _____
Main concern(s) _____

Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

— Roots and Root Collar —

Collar buried/Not visible ☐ Depth _____ Stem girdling ☐
Dead ☐ Decay ☐ Conks/Mushrooms ☐
Ooze ☐ Cavity ☐ _____ % circ.
Cracks ☐ Out/Damaged roots ☐ Distance from trunk _____
Root plate lifting ☐ Soil weakness ☐
Response growth _____
Main concern(s) _____

Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐
Likelihood of failure Improbable ☐ Possible ☐ Probable ☐ Imminent ☐

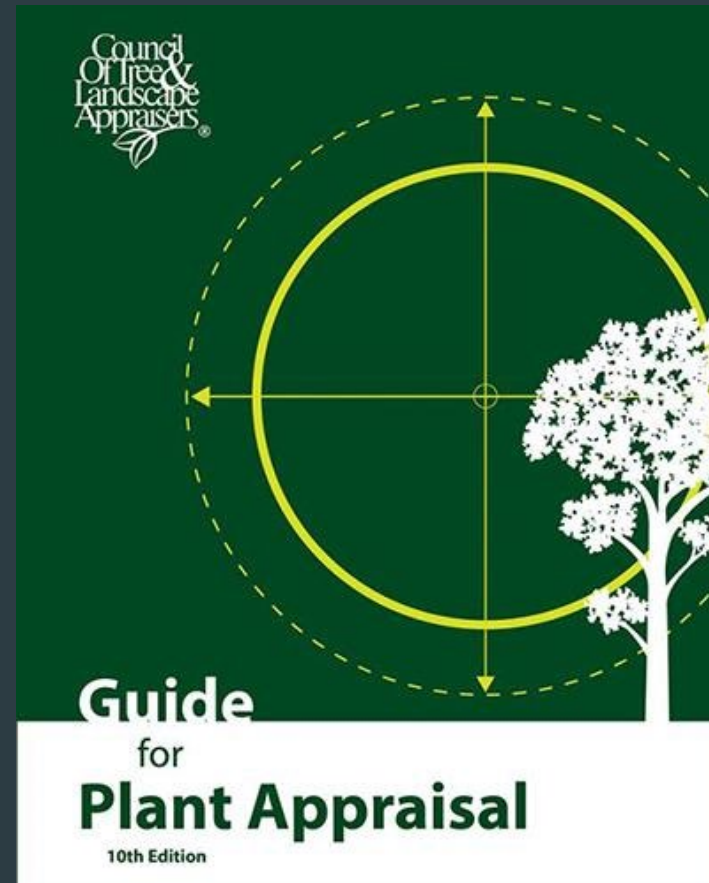
Page 1 of 2

One additional complication: Changing someone's view of your property



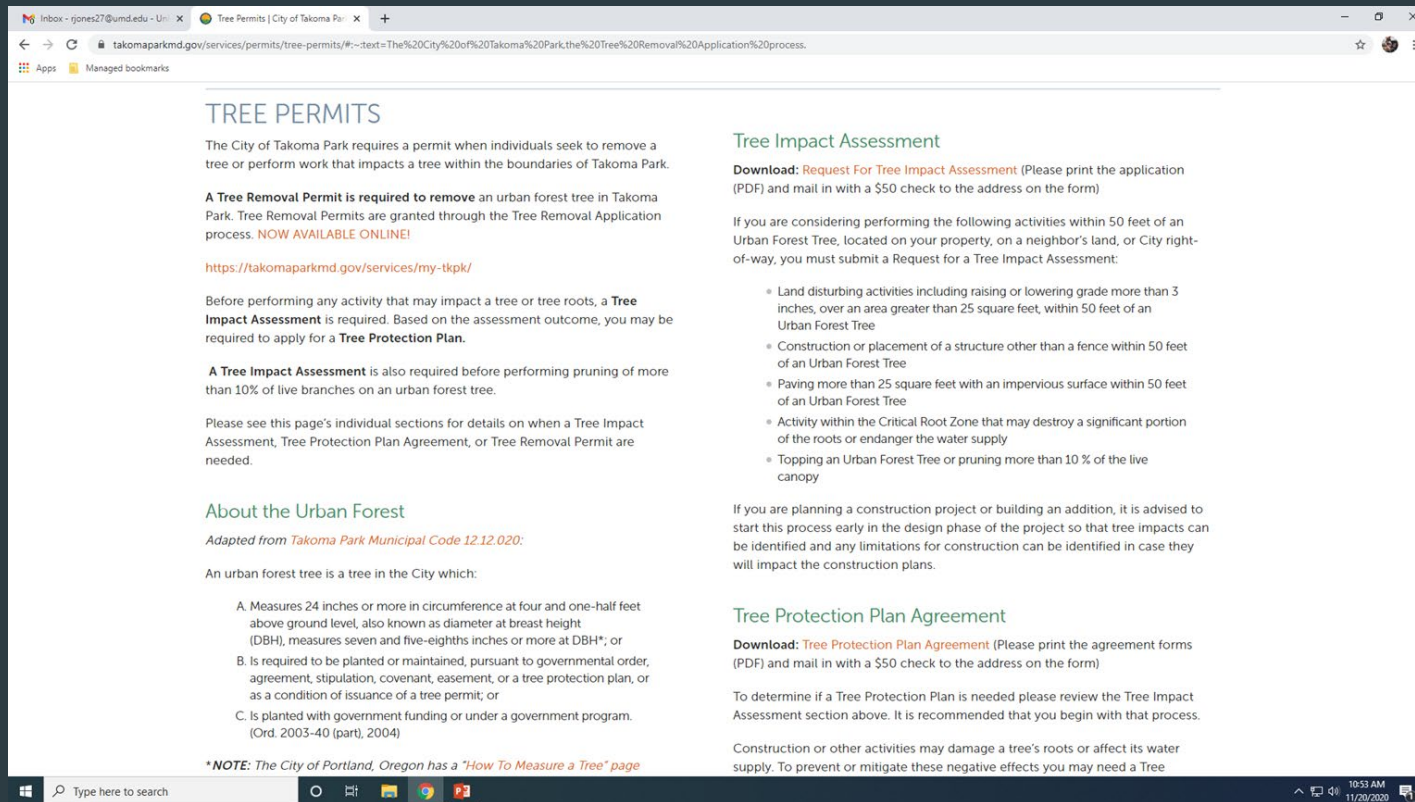
Tree Value Appraisals

- ▶ Trees do have a monetary value based on their particular species, location, health, and ecosystem services (not just their lumber.) Plant appraisers can determine this dollar figure, and it has been accepted by courts in the past.



Working With Your City/Town/HOA

- ▶ Many municipalities and HOA's have specific permitting requirements to remove trees. This is generally to protect the overall tree canopy coverage in a given area, and to preserve the benefits of trees. Be sure to check with any requirements you may need to follow.



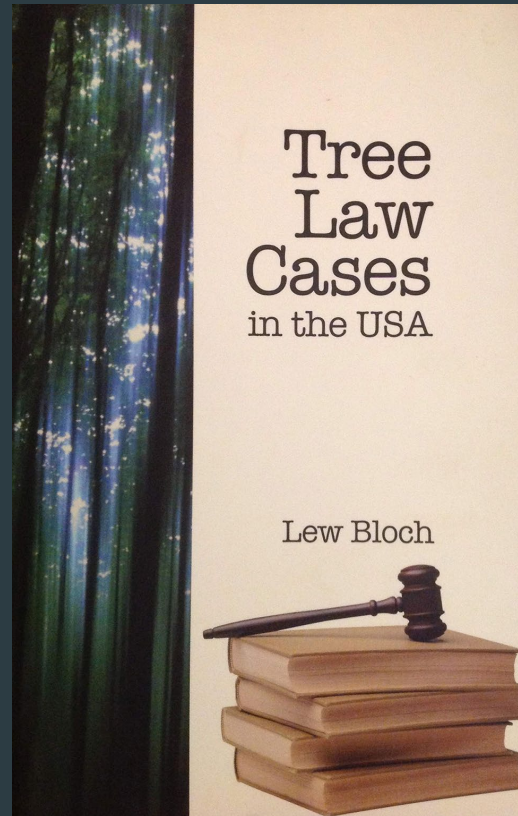
The screenshot shows a web browser window with the URL takomaparkmd.gov/services/permits/tree-permits/#--text=The%20City%20of%20Takoma%20Park,the%20Tree%20Removal%20Application%20process. The page is titled "TREE PERMITS" and contains the following sections:

- TREE PERMITS**
The City of Takoma Park requires a permit when individuals seek to remove a tree or perform work that impacts a tree within the boundaries of Takoma Park.
- A Tree Removal Permit is required to remove** an urban forest tree in Takoma Park. Tree Removal Permits are granted through the Tree Removal Application process. **NOW AVAILABLE ONLINE!**
<https://takomaparkmd.gov/services/my-tkpk/>
- Before performing any activity that may impact a tree or tree roots, a **Tree Impact Assessment** is required. Based on the assessment outcome, you may be required to apply for a **Tree Protection Plan**.
- A Tree Impact Assessment** is also required before performing pruning of more than 10% of live branches on an urban forest tree.
- Please see this page's individual sections for details on when a Tree Impact Assessment, Tree Protection Plan Agreement, or Tree Removal Permit are needed.
- About the Urban Forest**
Adapted from Takoma Park Municipal Code 12.12.020:
An urban forest tree is a tree in the City which:
 - A. Measures 24 inches or more in circumference at four and one-half feet above ground level, also known as diameter at breast height (DBH), measures seven and five-eighths inches or more at DBH*, or
 - B. Is required to be planted or maintained, pursuant to governmental order, agreement, stipulation, covenant, easement, or a tree protection plan, or as a condition of issuance of a tree permit; or
 - C. Is planted with government funding or under a government program. (Ord. 2003-40 (part), 2004)
- *NOTE:** The City of Portland, Oregon has a "How To Measure a Tree" page
- Tree Impact Assessment**
Download: [Request For Tree Impact Assessment](#) (Please print the application (PDF) and mail in with a \$50 check to the address on the form)
If you are considering performing the following activities within 50 feet of an Urban Forest Tree, located on your property, on a neighbor's land, or City right-of-way, you must submit a Request for a Tree Impact Assessment:
 - Land disturbing activities including raising or lowering grade more than 3 inches, over an area greater than 25 square feet, within 50 feet of an Urban Forest Tree
 - Construction or placement of a structure other than a fence within 50 feet of an Urban Forest Tree
 - Paving more than 25 square feet with an impervious surface within 50 feet of an Urban Forest Tree
 - Activity within the Critical Root Zone that may destroy a significant portion of the roots or endanger the water supply
 - Topping an Urban Forest Tree or pruning more than 10 % of the live canopy
- If you are planning a construction project or building an addition, it is advised to start this process early in the design phase of the project so that tree impacts can be identified and any limitations for construction can be identified in case they will impact the construction plans.
- Tree Protection Plan Agreement**
Download: [Tree Protection Plan Agreement](#) (Please print the agreement forms (PDF) and mail in with a \$50 check to the address on the form)
To determine if a Tree Protection Plan is needed please review the Tree Impact Assessment section above. It is recommended that you begin with that process.
Construction or other activities may damage a tree's roots or affect its water supply. To prevent or mitigate these negative effects you may need a Tree

MartyF@takomaparkmd.gov

“I need legal advice on trees”

- ▶ There are arborists who specialize in the field of insurance, liability, and appraisals. Ensure that the arborist you hire is licensed by the state, or their professional opinions or testimony may not be considered acceptable.
- ▶ One of them (who literally wrote the book) lives in Maryland: Lew Bloch



lewbloch1@gmail.com

To Sum Up? Notify and Document



Questions?

► marylandsustainableecologies@gmail.com