

Trees are a source of beauty and risk

By Debbi Sellers

Fall is a favorite time of year for many people. The crisp morning air, cool sunny days, the changing colors of the tree foliage and of course, pumpkin spice everything! Unfortunately, the potential for losses associated with trees increases in the fall and winter when Washington experiences an increase in stormy, windy weather. Members may be liable for bodily injury or property damage resulting from tree failure that occurs in member rights-of-way or on member-owned property. Liability for tree failure could include falling limbs and branches or the entire tree falling due to decay, disease, or damage. To minimize the risk of injury to a person or damage to property from trees, members should have ongoing inspections of any trees within the right-of-way and on member-owned property on a regular basis. In addition, members should have procedures in place for addressing notice from employees, or citizens, of possible dangerous trees.

Washington courts have consistently held that a municipality has a duty to address potentially hazardous tree situations within a reasonable period of time, once put on notice of the situation. Reasonable response times will vary depending on the severity of damage or disease to the tree, its location, and its potential to cause bodily injuries or damage to private property should it fail.

Citizens and employees of the member are often the ones who provide the first notice of a potentially hazardous tree. After receiving notice, an inspection and evaluation should be performed by an arborist or equally qualified person, to identify any damage, defect, or disease of the tree. In addition, the inspection report should recommend what action should be taken to minimize or negate any potentially dangerous situations. Inspections and evaluations will assist the member in deciding what, if any, additional action needs to be taken, i.e., pruning, removal, other forms of mitigation, or no action at all. All inspections and recommended actions should be documented and retained by the member. They should include the date and time notice was received; the date, time and name of the person performing the inspection and when corrective action was taken; or the reason why no action was warranted.

Members may also be contacted by citizens after a storm, complaining that a tree from member property has fallen onto their land or home and demand the member pay for the removal of the tree and any damage it has caused. If a member-owned tree falls on private property, the responsibility for the damage caused by the tree or branches may not rest with the member. Perfectly healthy trees can fall during high winds, especially when there is heavy ground

saturation experienced during storms. When this occurs, it is considered an “Act of God,” which is due to natural causes that could not have been prevented by ordinary care or foresight. A property owner does not have a duty to ensure each tree located on their land will remain standing during such an event. Any damage caused to private property by a fallen tree showing no evidence of defect or deterioration should be handled by the private property owner’s insurance.

If, however, a member-owned tree has obvious signs of disease or deterioration prior to the storm event, the owner of the damaged property could make a reasonable argument that the member knew or should have known that the tree was at risk for failure and should have removed it before it could fall.

There are times when a member may consider removing debris from private property caused by a **healthy**, fallen tree the member owns or maintains, as a service or good neighbor act. During the removal of the tree debris, a member could cause subsequent damage to the private property owner’s land, fence, or home, thus creating liability where there previously was none. For this reason, WCIA strongly recommends that our members transfer the risk by contracting with a reputable tree service for removal of debris, especially when it is resting against structures such as buildings and fences, or it involves entering private property. A member who chooses to have employees perform debris removal from private property should only do so after obtaining a signed release and hold harmless agreement from the property owner. For assistance with drafting a release, please contact your WCIA Risk Management Representative. For further information on tree management see WCIA Liability Resource Manual Guideline PAR 18, Municipal Tree Management. The WCIA Liability Resource Manual is located on the [WCIA website](#) (you must log in to the website to access the manual).