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Fallen Tree Liability

by Scott N. Hensgens and Jennifer C. Dyess

In the wake of Hurricane Gustav, many businesses and homeowners have been confronted with the dilemma of fallen trees. Fallen trees invite many questions, including who is responsible for any damage caused by the fallen tree and who is responsible for the cost of removing the tree.

Under Louisiana law, a tree owner is not liable simply because his tree falls and damages another's property. Rather, someone seeking recovery for such damage must prove that the tree's owner knew or should have known that the tree was diseased or otherwise "defective." A tree owner is not under a general duty to become a professional arborist in order to diagnose a non-apparent defective condition of an apparently health tree. He must, however, take appropriate steps to evaluate the tree's condition and to prevent damage through ordinary maintenance.

A property owner is able to avoid liability for property damage by showing that the damage was caused solely by an act of God, such as a hurricane. This defense does not apply, though, to liability for the removal of the tree (as opposed to property damage caused by the fallen tree). Thus, a property owner does have a legal obligation to take steps to remove his tree off his neighbor's property.



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