

ASK REAL ESTATE

My Neighbor's Tree Roots Damaged My Driveway

When wayward roots threaten people's properties, it can be hard to spur the owner to action. But there are ways.



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Q: I live in a single-family house, adjacent to a large condo in Roslyn, N.Y. A big tree on the condo's property has roots encroaching onto my property. The roots have been damaging my concrete driveway and the foundation of my house. I told the condo's management company about the damages, but they refused to do anything about it and said that I had to resolve the problem. Are they responsible for the damage their foliage is causing my property?

A: A tree that spreads its roots onto a neighboring property, damaging the foundation of someone else's home, is a nuisance. The owner of that tree, in this case the condo association, is legally responsible for resolving the problem. However, compelling someone to act is rarely an easy task.

"What the condo should do and what it will do are two different things," said **Andrew D. Brodnick**, a real estate lawyer in Rye Brook, N.Y.

Before you take any further steps, you need to figure out the scope of the problem. Call an arborist to give you an assessment of what needs to be done to get the roots off your property. This is not a simple pruning job with a branch overhanging your roof. Shaving or removing roots may weaken or even kill the tree, which could then fall, potentially on your property. So you want to proceed with caution.

Once you know the work (and cost) involved, write a letter to the condo association and the managing agent insisting that the association address the issue. Include a letter from the arborist detailing the recommendations, as an outside voice may carry more weight.

If the board fails to act, and the roots on your property can be removed or shaved without compromising the tree, hire someone to do the work for you. Later, you can sue the condo association in small claims court for the costs you incurred and the damage done to your property.

If the tree must come down, you may need to bring a private nuisance case against the condo association, seeking a mandatory injunction directing the association to remove the tree. Although that would be a long, drawn-out process, the threat of litigation may be enough to get the condo board to act.