Following last June’s violent derecho storm that packed reported winds of 70 mph, as well as last October’s Superstorm Sandy, which while largely sparing our area still resulted in a fair amount of damage, it came as no surprise when insurance claims offices were besieged with calls about downed trees and the destruction the storms left behind. But the financial question of whose responsibility it is to clean up the debris from uprooted trees and limbs is always a hot topic whether the tree falls because of a storm or any other reason.

The old saying goes, “If a tree falls in a forest and no one is around to hear it, does it make a sound?” Trust me, it makes a sound and the ruckus it causes is more than audible when the tree falls onto someone’s property, though bickering and a litany of frustrated questions are more likely the sound you’ll hear.

Insurance policy language is clear about tree damage: If a tree falls onto covered property—a home, a building, a common-area structure, a car—the carrier will pay to repair or replace the damaged property, less the policy’s deductible, as well as “your reasonable costs” to remove the tree, though insureds are encouraged to check with their agents for individual policy language limitations.

The issue becomes more confusing when the tree simply falls to the ground without damaging covered property and what most insureds don’t realize is that insurance won’t pay to clean up a downed tree that simply falls and leaves behind a big mess. The reason is simple: Carriers look at downed trees as maintenance issues and not insurance claims, and if covered property wasn’t damaged by the fallen tree, and the tree simply falls or is brought down by an “act of God” such as a storm, the cost to remove the tree is the responsibility of the owner of the property.

Which leads to our next point: Whose tree is it? Home and business owners understandably cry foul when a tree that stands on someone else’s property falls onto their own. The inclination is to knock on the neighbor’s door and tell him to come over and clean up his tree. Unfortunately, what was once your neighbor’s tree now has become your tree—your property—and your problem to clean up.

An easy way to remember who pays for what after a tree falls is that the owner of the damaged property pays:

- If the tree belongs to you and falls onto your own property, but didn’t damage any covered (insured) property, you pay to have the tree removed.
- If the tree belongs to you and falls onto and damages insured property, your insurance covers the loss, less your policy’s deductible. Insurance will also likely pay to remove the tree from the damaged property as well as the debris removal; check with your carrier to see how your specific policy language is written.
- If the tree belongs to you and it falls onto your neighbor’s property, the neighbor pays to have the tree removed. You would be responsible for cleaning up any debris remaining on your own property.
- If the tree belongs to you and it falls onto your neighbor’s property and damages the neighbor’s structure(s), the neighbor’s insurance policy responds to the claim.
- If a tree falls onto a vehicle, whether your own or someone else’s, the owner of the damaged vehicle’s auto insurance policy responds to the claim—filed under comprehensive.

Certainly it’s nice when neighbors are neighborly and are willing to share in the cost of removing a tree that’s fallen, but for the most part, the above points are how such issues are handled.

Where live property coverage is concerned, insureds should also check the limits offered. Should a live tree be struck by lightning, for example, a covered peril, and fall onto common ground, the property policy would pay for the tree subject to the policy limits for live aged property, less the policy’s deductible, as well as “your reasonable costs” to remove the tree, though insureds are encouraged to check with their agents for individual policy language limitations.

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property, but generally not for the removal of the tree. In addition, live property is limited to specific, named perils: fire, lightning, explosion, riot or civil commotion, aircraft or vehicular damage. Broader policy forms may also include vandalism, malicious mischief and theft.

In homeowners associations, should a tree in the common area fall onto an individual home, unless the tree was dead or dying, the homeowner should seek recovery from his/her homeowners’ policy, including the cost to remove any debris. The association’s policy would not be responsible for the cost of repairs to individual homes or for debris removal, but damage to the tree owned by the association would be covered—up to policy limits—provided the tree was damaged by a covered peril. In cases, however, where a resident has advised the association that they are concerned that a dying or dead tree may fall on his/her property, it is advisable that the association have an arborist check the health of the tree and have it removed immediately if necessary. Diseased or dead trees that fall from the common area onto an owner’s property would be a claim against the association’s and not the individual homeowner’s policy.

Another issue that must be taken into consideration is whether a property owner should file a claim, even if covered property has been damaged. First, there’s the matter of the deductible that needs to be met before the policy will respond to a loss: Will the damage exceed the deductible? And second, if it does is it really worthwhile to file a claim that may pay very little, but will harm the claims experience of the property owner? If the damage is minimal, it’s highly advisable to self-insure small losses. Insurance carriers and agents alike wish to impress upon insureds that insurance is for catastrophic loss. Small, frequent losses can add up to create a history that can come back to haunt you in terms of renewing and purchasing insurance coverage for your property.

The last point involves assigning negligence. The “general rule,” said Benny L. Kass of Kass, Mitek & Kass PLLC in Washington, D.C., “is that if your tree falls on your neighbor’s property, even if it causes injury to person or damage to property, you will not be liable if you were not negligent.” Negligence, in this case, could include failure to remove a tree that an owner fears is unhealthy or is already dead and is in risk of falling.

The “Natural Property” section of a community association’s insurance policy should be examined for limits, perils insured against and exclusions. Where increased coverage limits may be necessary to adequately insure live property, so too, is the need for adequate maintenance and risk management of natural property so that the risk of loss to people and property is minimized.