

Tree Harvesting on Your Land: Legal Liability Issues and Precautions



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Imagine that you have a number of dead and downed trees on your property and someone asks for permission to harvest the trees. Typically, that person seeks an exchange: removal of the trees at no cost in exchange for rights to the wood. If you grant permission and the person suffers an injury while removing the trees, will you be liable for that person's medical bills and other costs? Are there any actions you could take to protect yourself from the potential of liability? These are important questions a landowner should address before allowing someone to harvest dead and downed trees.

Ohio Premises Liability Law

Ohio premises liability law provides the basis for sorting through questions about liability for tree harvesting. In Ohio, landowners owe property visitors the legal duty to try to keep them safe from harm. The extent of the landowner's legal duty varies for different visitors, depending upon why a person is on the property. For example, a landowner has a higher obligation for a customer's safety than for the safety of a trespasser because the customer provides financial and business benefits to the landowner. A landowner's liability risk is higher for a customer than for a social visitor or a trespasser.

To best minimize liability exposure for firewood harvesters, it would be wise for a landowner to treat a firewood harvester with the same degree of care that the landowner would exhibit towards a customer. While firewood harvesters typically don't pay a landowner for the wood, they do often provide a benefit to the landowner by removing debris, clearing the property, reducing fire threats and generally aiding in woodland management. Recognizing these benefits and treating the harvester with the same degree of care as a customer means that the landowner should take steps to protect the harvester from all dangerous conditions on the property.

What is a "dangerous condition"? Every possible situation that might harm a visitor does not fit within the legal definition of a dangerous condition. Ohio law considers a dangerous condition as one that creates an *unreasonable and unnecessary* risk of harm that is not *readily apparent* to the property visitor. Dangers that are commonly encountered, out in the open or obviously risky or harmful usually do not fit the legal definition of a dangerous condition. The law only expects a landowner to protect a visitor from a danger that the visitor cannot see, did not expect, or could not defend himself against.

Dangerous conditions for firewood harvesters. A landowner should assess the area where a person intends to harvest dead and downed trees. Are there dangers that could cause harm and are not readily apparent or observable? For example, is there a hidden water well, gas well or mine in the area? Are there old tree spikes, barbed wire strands or hunting stands partially buried in the tree? The landowner should address these types of dangers by either eliminating the dangers or providing a warning to the firewood harvester about the conditions. Failing to assess the property and address the dangers could result in liability for the landowner if the harvester suffers harm because of an unexpected dangerous condition. The landowner should also be careful not to create a dangerous condition through actions such as granting permission to too many people, allowing hunters or other guests on the property at the same time, not allowing harvest when lighting conditions are favorable or providing unsafe access drives.

Are dead trees dangerous conditions? Dead trees themselves pose dangers—their instability and unpredictability create a risk of harm for those who attempt to fell or harvest the trees. In a typical situation, it would be difficult for a firewood harvester to claim that the tree itself was a dangerous condition that required elimination or a warning by the landowner. Regardless, a landowner can reduce liability risk by ensuring that a firewood harvester is aware of the dead trees. The owner could visit the area with the harvester, point out or mark the dead trees, or provide a map noting tree locations.

Other Precautions for Landowners

Hiring a professional to remove the trees is the easiest way to ease the fear of liability. Under this arrangement, the professional should provide his or her own equipment and have control over the harvest. This creates a legal relationship that shifts liability away from the landowner and onto the professional.

A waiver or release of liability is a risk management tool familiar to many landowners. Should a landowner require a firewood harvester to sign a waiver? While a waiver tries to shift the risk of liability to the harvester, a landowner should be aware that Ohio law will not uphold an attempt to completely waive away the landowner's own negligence and legal duties. A waiver must be narrowly written to address only the risk involved with the situation. For this reason, a landowner should consult an attorney if intending to use a waiver.

A harvest agreement may provide a landowner with liability protection. This written agreement should contain a number of important provisions, such as identification of people permitted to harvest, the area where the harvest can occur, date and time of day restrictions, equipment or vehicles allowed on the property, use of gates, fences, driveways and access points, required use of safety equipment and procedures, liability for damage to the landowner's property, acknowledgement of risks related to wood cutting, clarifications that the landowner is not providing insurance coverage, is not the landowner's employee and is not receiving payment for the trees, and an indemnification provision. A landowner should consult an attorney for preparation of a harvest agreement.

Property insurance is always important. Ensure that the property insurance policy is up to date and understand how it addresses tree harvesting activities.

Conclusion

If a landowner wants to allow someone onto the property to harvest dead and downed trees without receiving payment for the trees, the landowner can address legal liability concerns through these actions:

1. *Assess the area where tree harvest will take place.* Identify all dangerous conditions that are not readily apparent and that create a risk of harm to the harvester.
2. *Address the dangers.* Either eliminate the conditions or warn the harvester of the dangers through written directions, fencing, blockades, signs or maps.
3. *Avoid creating new dangerous conditions.* Limit access to other property visitors, choose safe access points, and allow harvest only during daylight hours.
4. *Use a written tree harvest agreement.* Consult an attorney for an agreement that addresses your situation.
5. *Review the property insurance policy.* Ensure that the property insurance policy addresses tree harvesting.
6. *Hire a professional harvester.* Shift legal liability by using a paid professional to harvest dead and downed trees.

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