

Waterford Place Homeowners Association, Inc.

Administrative Policy and Procedures for Tree Care, Maintenance, Removal, and Cost-Sharing for Fallen Tree Removals Which Occur on Private and HOA (Common Area) Property in the Waterford Place Homeowners Association Community

Adopted: October 24, 2022

Effective: October 24, 2022

WHEREAS Article XI, Section 1 of the Declaration of Covenants, Conditions & Restrictions of the Waterford Place Homeowners Association, Inc. states: "Each Owner shall keep each Lot owned by him, and all improvements therein or thereon, in good order and repair and free of debris, including, but not limited to, the seeding, watering and mowing of all lawns (lawns are currently being mowed by the landscape contractor), except as provided in Article V, Section 1, Subsection (g), the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. . . ." In compliance with existing Maryland and Montgomery County regulations, if a tree falls on and beyond a property line, including if it damages the fence dividing the properties, *each affected owner bears their own resultant costs*. Therefore, the affected owners are responsible for damages to their property, including cleanup, removal, and related expenses.

WHEREAS Hensley v. Montgomery County, 25 Md. App. 361, 364 (1975) ruled: Under Maryland Law, for fallen trees or similar accidents that may be qualified as an "act of God," the affected owners are responsible for damages to their property, including cleanup, removal, and related expenses. These expenses may be covered under the homeowner's insurance policy. Property owners generally have the right to self-remedy if tree roots or branches encroach on or threaten to damage their private property.

NOW, THEREFORE, BE IT RESOLVED Waterford Place Homeowners Association, Inc., a Maryland Homeowners Association, duly approves the following resolution and exhibit:

1. In Montgomery County and all of Maryland, when a tree or its branches fall, it is considered an "Act of God." This means the portion of the tree and the damage from it that is on your property is your responsibility to clean up and repair. (Hensley v. Montgomery County, 25 Md. App. 361, 364 (1975))
2. The portion of the tree and damage to neighboring properties is their responsibility. Such accidents are normally covered by the affected owner's insurance and are usually resolved by reporting a claim.
3. An exception to this general rule is that the owner of the property where the tree originated may be responsible for damage to a neighbor's property if the owner knew, or had good reason to know, that the tree presented a danger to adjoining properties. For example, if a tree was diseased and had been weakened by storms, it may be fair to say that the owner had reason to believe that the tree would fall and, judging by its size and location, damage a neighbor's property. Otherwise, if a hazardous condition is not known, the accident is considered an "Act of God," and the affected property owner is therefore responsible for the damage to their property.
4. A property owner may need a permit to remove an individual tree. This will depend on the caliper size and location of the tree.
5. Maryland law requires that only Maryland Licensed Tree Experts should be hired to trim branches, remove trees, and provide tree care services.
6. All tree care professionals practicing in Maryland must obtain a license. Without a license, they may not practice or advertise tree care services in the state. To obtain a license, the applicant must possess adequate and related college education plus one year of experience under a Licensed Tree Expert (LTE) or have three years' experience under an LTE, then have passed an exam and carry adequate amounts of liability and property damage insurance.

Waterford Place Homeowners Association, Inc.

- 7. Maryland has adopted the "Massachusetts Self-Help Rule" that says you must assume responsibility for the care and preservation of your own property. This means that you can cut branches that hang over onto your property. However, you may not destroy the tree in the process, nor can you cut the tree down. Also, you must stop at the property line unless the neighbor or the Waterford Place HOA has given you permission (it's best to have it in writing). (*Melnick v. C.S.X. Corp., et al., 312 Md. 511, 540 A.2d 1133 (1988)*)

Any person who trespasses and removes trees or branches without an owner's or the Waterford Place HOA's (for trees located on the Common Areas) permission, unless they are performing work for a public service company or a public roads agency, may be liable for any surveys or appraisals needed, court costs that may incur, and triple the amount of the value of the trees or timber cut.

This resolution was adopted on October 24, 2022, at an open Board of Directors meeting where a quorum of the Board was present and will become effective immediately.

Jacquelyn Y. Roberts

Digitally signed by Jacquelyn Y. Roberts
 DN: cn=Jacquelyn Y. Roberts, o=Waterford Place Homeowners Association, Inc., ou=President, Board of Directors, email=WPHOA.Jacquie@gmail.com, c=US
 Date: 2022.10.25 14:37:41 -04'00'

Association's President

Date

DocuSigned by:

Arienne Brown

10/26/2022

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Association's Treasurer

Date

Waterford Place Homeowners Association, Inc.

EXHIBIT A. Process and procedures for cost-sharing between Waterford Place HOA and Waterford Place homeowner(s) for the expenses related to the removal of a Common Area tree or portions of a Common Area tree (limbs, branches), which may, as an act of God, fall and land on a homeowner's private property and require removal by a tree care service.

Should the situation arise where a Waterford Place HOA Common Area tree or portions of a Waterford Place HOA Common Area tree (limbs, branches) fall and land on a homeowner's private property, the following steps will be taken to facilitate the removal of the tree and payment for the removal of the tree.

- 1) The affected homeowner(s) will capture digital photos of the fallen tree to document the impact of the fallen tree on the homeowner(s) private property.
- 2) The affected homeowner(s) will contact the Property Manager (currently Property Management People) **and** the Waterford Place HOA Board of Directors (hoaboard@waterfordplacehoa.org) to provide the captured images of the fallen tree and to inform property management and the Waterford Place HOA Board of Directors of the fallen tree situation.
- 3) The Property Manager and the available Waterford Place HOA Board of Directors/Officer(s) (i.e., President, Vice President, Treasurer) of the situation and discuss the next steps to facilitate the removal of the fallen Common Area tree.
- 4) The Property Manager will contact a tree services company (a valid Maryland Licensed Tree Expert company) to provide an estimate for the date, time, and costs for removing the fallen Common Area tree.

NOTE: If the homeowner(s) prefer to contact and hire an appropriate Maryland Licensed Tree Expert company to expedite the removal of the tree, the homeowner(s) may do so, provided that the tree services company hired is licensed to provide tree care removal services in the state of Maryland. If proper policies and procedures are followed, including providing an itemized list of tree services provided, the Waterford Place HOA will reimburse the homeowner(s) for one-half/50% of the actual tree removal costs only. Any expenses related to the residual damage, cleanup, or repair of an owner's property will not be considered/reimbursed.

- 5) The Property Manager will update the Waterford Place Board of Directors/Officer(s) and the homeowner(s) about the confirmed date, time, and costs involved in removing the fallen Common Area tree and coordinate the permission and plans to obtain access to the homeowner(s) 's property to remove the fallen Common Area tree.
- 6) The Property Manager will obtain a *written understanding and agreement* from the homeowner(s) indicating their obligation to pay one-half/fifty percent (50%) of the **cost of removal** of the Common Area tree from their property. *(Related fees charged for stump grinding on the Common Area will be excluded from the total cost billed to the homeowner(s). Therefore, only one-half/50% of the actual tree removal costs will be billed to the homeowner(s).)*

REMINDER: In Montgomery County and all of Maryland, when a tree or its branches fall, it is considered an "Act of God." This means the portion of the fallen tree and the property damage from the fallen tree on a homeowner(s) 's property is the homeowner(s) 's responsibility to clean up and repair. Each affected owner bears their own resultant costs. Such accidents and costs are normally covered by the affected owner's insurance and are usually resolved by reporting a claim.

Waterford Place HOA will only be responsible for one-half /fifty percent (50%) of the cost of the actual removal of the Common Area tree from the owner's property. Waterford Place HOA will not be responsible for any expenses related to the residual damage, cleanup, or repair of an owner's property.

- 7) Following the completion of the tree removal process, the Property Manager will obtain an invoice from the tree services company and pay the tree services company the total costs for services rendered.
- 8) The Property Manager will prepare and send an invoice to the homeowner(s) for one-half/fifty percent (50%) of the **cost of removing** the Common Area tree from the homeowner(s)' property.
- 9) Payment from the homeowner(s) will be due in full within 30 calendar days from the invoice received from the property management company.

Waterford Place Homeowners Association, Inc.

RESOLUTION ACTION RECORD

Resolution Type: Administrative No. 10242022

Pertaining to: Policy and Procedures for Tree Care, Maintenance, Removal, and Cost-Sharing for Fallen Tree Removals Which Occur on Private and HOA (Common Area) Property in the Waterford Place Homeowners Association Community

Duly adopted at a meeting of the Board of Directors held on: October 24, 2022

Motion by: Ken Buch Seconded by: Arienne Brown

VOTE:

	YES	NO	ABSTAIN	ABSENT
<u>Jacquelyn Roberts</u> President	<u>X</u>	_____	_____	_____
<u>Jad Ibrahim, Jr.</u> Vice President	<u>X</u>	_____	_____	_____
<u>Arienne Brown</u> Treasurer	<u>X</u>	_____	_____	_____
<u>Ken Buch</u> Member At Large	<u>X</u>	_____	_____	_____
<u>Wanda Myers</u> Member At Large	<u>X</u>	_____	_____	_____

ATTEST:

Jacquelyn Roberts October 25, 2022
President Date

FILE:Book of Resolutions: Resolution effective date: _____