

The Connecticut Tree Protective Association's Position Statement on Exceptions to the Arborist Law

It is the position of the Connecticut Tree Protective Association that, whenever an individual or firm advertises, solicits or contracts to do work to improve the condition of fruit, shade or ornamental trees in the State of Connecticut, then that individual or, in the case of a firm, that firm through a representative, must be licensed as an arborist in accordance with the "Arborist Law" - Sections 23-61a through 23-61f of the Connecticut General Statutes. The phrase, "to improve the condition of fruit, shade or ornamental trees" applies whether the condition referenced is the health and well-being of the tree, the potential of the tree to impact on the safety of people or property in its vicinity, the aesthetic value of the tree, the likelihood of the tree to be a nuisance to its owner or others, or any other similar situation.

The Connecticut Tree Protective Association believes that this position is the most accurate interpretation of both the wording and the intention of the Arborist Law. The Board also considers this position as that which is most beneficial, in terms of public safety and consumer protection, to the citizens of Connecticut.

In the Statute, there are two exceptions to the licensing requirement. In those situations in which the tree is being felled and removed, an arborist license is not required. Also, individuals doing work on their own property or that of their employer do not need to be licensed. In addition, it is recognized that unlicensed individuals may work under the supervision of a licensed individual.

The Basis for Our Concern

Trees are magnificent plants that enrich our lives and our environs through their majesty, and through their contributions to the natural world around us. They provide oxygen, shade, wildlife habitat and spiritual respite. Their many values are well-known and well-regarded in society.

It is because of these values, and because trees are living creatures that require specialized knowledge to be handled properly, that the original "Arborist Law" – then known as the "Tree Expert Law" - came into being¹. The goal of the law then is the same as it is now – to promote proper tree care by providing a means to identify individuals qualified in its practice. By establishing a licensing requirement, the law also establishes the importance of qualifications and standards. The licensing requirement is an attempt to ensure that, whenever tree work is performed for hire, trees will be cared for professionally, with the application of intelligence and knowledge, and that treatments based on the latest scientific advances will be used. The licensing requirement also helps to protect the safety of the public at large, and the interest of consumers, who might otherwise be at the mercy of unscrupulous and unqualified individuals.

¹ The original "Tree Expert Law" was approved by the legislature in 1919. Prior to 1963, the term "tree expert" was used to designate those individuals licensed by the law. In 1963 that term was changed to "custom tree worker", which in the 1977 statute was changed to the present term, "arborist".

A major reason for the Connecticut Tree Protective Association's support of this law is concern for public safety. Trees that are cared for improperly and are in close proximity to people and property have the potential to seriously impact the safety of tree owners and the general public. Damage to property and injury or death to people can be a consequence of unrecognized tree conditions or poorly applied tree practices. Such trees may become dangerous through weakened limbs, damaged roots or declining health. As trees are living organisms, the decline in these trees may be progressive, and may not become apparent for many years. The first sign of damage may in fact be the sudden fall of a limb, the uprooting of a mature tree or the unexpected death of previously healthy tree.

However, in recent times, it has been suggested that there is an implicit limitation in the scope of the "Arborist Law". There are those who say that the licensing requirement should not apply to individuals who perform tree work in which the improvement of the health or well-being of the tree is not the primary intent of that tree work, providing that these individuals also do not represent to their customers that their work is being done to improve the health or well-being of the tree. According to this interpretation, these individuals are exempted from the provisions of the Arborist Law, including the licensing provision, because their work does not meet the definition of "arboriculture".

The Connecticut Tree Protective Association disagrees with this interpretation of the Arborist Law, for two reasons. First, it does not find that such an interpretation of the law is supported in a reading of the law. Second, this interpretation of the law, if accepted, could seriously undermine public safety and consumer confidence with regards to tree care, as well as promote a decline in the standards associated with that care.

Reading the Law – Part 1 **The meaning of phrase "to improve the condition of"**

The text of the Arborist Law is fairly straightforward. Section 23-61a, subsection (a) states that "arboriculture" means any work done for hire to improve the condition of fruit, shade or ornamental trees...". The crux of the issue at hand is the meaning of the phrase "to improve the condition of". With regards to the Arborist Law, is it intended that this phrase is a reference *only* to improving the health and well-being of the tree? If so, does the term "arboriculture" then apply only when work is done specifically to improve a tree's health and well-being? Or, should the interpretation of the phrase "to improve the condition of" be broader, to include such conditions as those involving the safety, aesthetics, and value of the tree, as well as those involving its health and well-being? If so, then does the term 'arboriculture' apply to *any* work done to improve the condition of a tree?

The Connecticut Tree Protective Association supports interpreting the law such that the word "condition" is given the broad meaning that it regularly receives in common usage.

According to common usage and the dictionary, the use of the word “condition” is a reference to the “state of being” of an object.²

Used in this sense, the word “condition” is inclusive. One can talk about a good condition, a bad condition, an unhealthy condition, a hazardous condition, an unsafe condition, an overgrown condition, an unappealing condition, and so on. Each of these is a tree condition that an arborist may legitimately be called in to assess and, if necessary, address.

For an arborist, the health and well-being of the tree is always an important consideration. In large part, the professional value of an arborist is the ability to place the concerns of the tree owner within the context of the tree’s health and well being, and to then be able to address the tree owner’s concerns in a way that is satisfactory to both the tree owner and the arborist.

In many situations, the immediate concern of the tree owner is not the health or well-being of the tree. Rather, a tree owner will often ask an arborist to address some other condition of the tree, such as its shape and appearance or its potential to cause damage. In fact, some of the best arboricultural work has little to do with the direct improvement of the health or well-being of a tree, but rather the prevention of harm to that tree, while meeting the tree owner’s objectives. That is because, in such situations, the condition that the arborist often is being asked to address does not stem from a problem with the health or well-being of the tree, but from human plans for that tree, or for the space around that tree.

An example might be useful. A tree condition that an arborist may be called in to correct is that of a limb that is too near to a roof. From the homeowner’s perspective, removal of the limb improves the tree’s condition, by making the tree safer for the people in the house and for the value of the property. At the same time, assuming that it is a healthy limb, removing the limb does not improve the health or well-being of the tree. The arborist’s professional contribution is the removal of that limb in a way that does least harm to tree, and that also provides for the tree becoming safer, relative to those who will use the house or otherwise occupy the space around the tree.

Reading the Law – Part 2 Characterizing Arboriculture

However, perhaps because a definition of “arboriculture” based only on improving the condition of trees is somewhat open-ended, the authors of the law have also characterized “arboriculture” through a list of specific practices directly associated with the profession. The portion of the law cited earlier continues on to read:

As used in sections 23-61a to 23-61f, inclusive, as amended by this act, "arboriculture" means any work done for hire to improve the condition of fruit, shade or ornamental trees by feeding or fertilizing, or by pruning, trimming, bracing, treating cavities or other methods of improving tree

² Definition is from Webster’s Third New International Dictionary, copyright 1981

conditions, or by protecting trees from damage from insects or diseases or curing these conditions by spraying or any other method; ...

In this section, the law identifies typical ways in which an arborist improves the conditions of trees. This listing of methods implies that the practice of arboriculture can be identified in large part by the methods associated with its practice. This interpretation is further strengthened in Section 23-61b subsection (b), which states that “The Commissioner shall require the applicant to show upon examination that he possesses adequate knowledge concerning proper methods of arboriculture and the dangers involved and the precautions to be taken in connection with these operations...”. In Section 23-61b subsection (g), in a discussion of the standards to be used for examining applicants for the license, the law states that, “Such standards shall provide that in order to be certified, an individual shall be competent with respect to the use and handling of pesticides ... and in the proper and safe application of recognized arboricultural methods.” These citations show that the law recognizes that there are specific techniques that are identifiable as arboricultural methods. The Connecticut Tree Protective Association believes that it reasonably follows that the use of these identifiable arboricultural methods can then be viewed as indicators that arboriculture is being practiced.

In identifying specific arboricultural methods and tying them to the need to be licensed, the law addresses a very serious concern. Individuals not fully knowledgeable in tree care but somewhat capable in the application of the techniques associated with the practice of arboriculture might seek to be accorded the privileges given by the law to licensed arborists. In essence, technical competence is assumed as being the equivalent of professional insight and experience. Because technical competence does not necessarily involve an understanding of the appropriateness of a treatment or its alternatives, nor of the long-term impacts of that treatment, such an assumption would be wrong. That is a key reason why the law establishes standards for the arborist license, and why the law stipulates that, in order to do, legally, what appears to be arboriculture, individuals must either demonstrate their qualifications as arborists by attaining their license, or they must work under the supervision of a licensed arborist.

In sum, then, “arboriculture” involves the feeding, fertilizing, pruning, trimming, bracing and treating cavities of trees, or the treatment of insects and diseases in trees by spraying pesticides or other methods, or the application of other similar methods, in order to improve the condition of trees. The condition to be improved may or may not, from the perspective of the one ordering the work, relate directly to the health or well-being of the tree. In the case of a limb rubbing against a roof, the health or well-being of the tree is not the condition in question. The typical tree owner is, in this situation, much more concerned about the whether the tree is damaging the house. Nonetheless, removal of that limb falls under the definition of arboriculture, as given in the law, in that it is an

effort to improve what, in the view of the property owner, is an unsatisfactory tree condition.³

For the arborist, being highly concerned about the health and well-being of the tree is a part of the job. The arborist is a professional who is knowledgeable about trees, has insight into their health, is skilled in the methods of arboriculture, and is understanding of the customer's concerns. The arborist is able to bring all of these together to achieve a satisfying result, both for the customer and for the tree.

Consumer Confidence in Tree Care

As mentioned earlier, public safety is an important consideration in arboriculture. It is also important that consumers who make use of tree care professionals are confident that the tree work is done properly, professionally, and at a level consistent with current knowledge regarding tree care. It is a goal of the Connecticut Tree Protective Association that the public holds the tree care profession to the high set of standards made possible by the Arborist Law.

Over the years, Connecticut's Tree Protection Examining Board has made it clear that the Arborist Law is intended to have two beneficiaries – the customers of the tree care workers, and the conscientious tree care workers who have earned their license and who practice their profession skillfully and correctly. As stated in the "First Report of the Tree Protection Examining Board", from June 30, 1921:

For many years men have traveled about the State and in various places obtained work for the alleged improvement of orchard and shade trees, such as pruning, spraying, bracing, filling cavities, or applying fertilizers. In some cases good service was rendered and the owners were satisfied; in others no benefit resulted. Occasionally trees were positively injured by the treatment, because the "tree doctors" did not understand their business. Finally, this condition existed: tree work was being done by well-trained, intelligent and conscientious men; by poorly trained but reliable men; and worst of all, by unscrupulous men who were usually, though not always, poorly trained. The unsatisfactory work of the unreliable men had a tendency to bring the whole business into disrepute.⁴

As detailed in this report, this situation led to the passage of the original "Tree Expert Law" in 1919. In this Connecticut was a leader, as this was the first law to license tree professionals passed in the country.

The viewpoint of the first Tree Protection Examining Board was echoed in the March, 1951 publication, also by Tree Protection Examining Board, entitled "Requirements for Tree Workers in Connecticut":

³ The same argument can be made concerning trees along a roadway owned by a town or municipality. Although the removal of limbs may be for the purpose of clearing sight lines and allowing free passage, if the tree work is being contracted out, then the provisions of the arborist law apply.

⁴ Published by the Connecticut Agricultural Experiment Station, New Haven, CT.

The main purpose of the Connecticut law requiring all commercial tree experts to secure licenses from a Tree Protection Examining Board is to prevent inadequately trained and inefficient tree workers from operating in the state. The law is designed both for the protection of the tree owners and the licensed tree workers.⁵

To the Tree Protection Examining Board, the advantages of a carefully worded and strongly enforced arborist licensing law extend to both the tree owner and the arborist. These advantages, to the tree owner and to the arborist, are intertwined, and result from the establishment of clearly identifiable standards associated with the practice of tree care.

When tree work is performed, a customer should reasonably expect that the work will be done professionally, with care and understanding of both the tree owner's needs and that of the tree. The customer should be able to expect that the tree will be properly evaluated and, in the case of insect or disease problems, be appropriately diagnosed.

The customer should also be able to expect that the professional doing this evaluation has full knowledge of the range of techniques available to deal with this specific condition, and be capable in the proper execution of these techniques. If, as sometimes might occur, the professional is unable to arrive at a proper evaluation or does not have the proper techniques at his or her disposal, then he or she should be forthright with the customer in this regard. The hallmark of a professional is not simply the ability to apply techniques correctly, but also the ability to recognize the likely consequences of applying or not applying specific techniques in specific situations.

Reasonably skillful but inadequately trained tree workers may succeed in the application of basic arboricultural techniques. However, that does not mean that they have full understanding of the consequences of their actions. Inappropriate tree work done solely to solve a current need can cause great harm down the road. In these situations, previously sound and healthy trees can become hazardous, and trees with unrecognized problems can go untreated.

The arborist license is important because it sets standards of knowledge and of practical insight for the profession. These standards create a measuring stick by which tree care in the state can be assessed. These are independent standards, established by the State of Connecticut through the Department of Environmental Protection, with the assistance of the Tree Protection Examining Board. Furthermore, these standards are strongly supported by the practicing professional arborists in the state.

In order for this measuring stick to be useful, these standards must be applied whenever tree care is done for hire. It is only when these standards are reliably applied that the public will come to consider them to be an inherent aspect of tree care. Inadequately trained and unlicensed tree workers have an incentive to maintain the public's ignorance of these standards. As a result, the general public suffers. By not understanding what tree care should involve, the general public is unlikely to know when

⁵ Published by the Connecticut Agricultural Experiment Station, New Haven, CT.

work is done improperly or the potential consequences of improper work. Licensed professionals also suffer, through the loss of esteem for their profession and through unfair competition with those who have not invested as fully in professional development.

People who promote a narrowed definition of the term ‘arboriculture’, seeking to apply it only when tree work is done to improve the health or well-being of the tree, would create an exception in the application of the “Arborist Law” that cannot be supported through a reading of the law. This exception would encourage a situation that would be harmful to public safety, tree owners, and licensed arborists.

For all of these reasons, the Connecticut Tree Protection Association disagrees with this narrowed definition of arboriculture, and encourages that the Arborist Law be interpreted as outlined in this statement.

Approved by vote of the Board of Directors
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