



Solar Access and Trees

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When I first moved to the San Luis Valley in the early 1980's, I was struck by how many innovative solar installations I saw. I found passive solar greenhouses particularly interesting. I even designed one, but never built it. With 350 days of sunshine (according to Alamosa.org), cold winters, and rising utility rates, solar energy is becoming increasingly important to home owners.

“Small-scale solar energy production has a long history here [Alamosa]. As far back as the early 1980s, farmers and back-to-the-land hippies, who still share and define the valley's culture, had built the highest per-capita concentration of home-based solar installations in the country,” according to a New York Times article (June 3, 2010).

Increasingly, you can see roof-mounted photovoltaic systems or free standing ones in Alamosa residential areas.

But what happens if your neighbor's trees grow tall and block the sunshine that once fell on your solar system?

Solar rights are the rights to access and to harness the rays of the sun, according to Sara Bronin of the University of Connecticut School of Law. She states, “It is curious that a natural resource as valuable as sunlight—increasingly valuable in the age of the solar collector and the climate change crisis—remains almost entirely unregulated in the United States.”

Essentially, in Alamosa and many other cities in our country, you have no solar rights. However, Colorado does have solar easements. Colorado law defines solar easements as “the right of receiving sunlight across real property for any solar energy device.” Property owners can agree voluntarily to solar easements with their neighbors to protect and maintain proper access to sunlight.

According to Bronin, “The majority of states require such easements to be in writing and contain detailed information about the size of the affected space, the manner of termination, and compensation. In most jurisdictions, the easement must also be recorded on the land records to provide notice to individuals researching” property information. As far as I can tell, such easements are rare.

Consider another situation. What if branches of your neighbor's tree are hanging over your property and shading your solar collector (or even your vegetable garden)? You do have some rights here. However, most information I've uncovered strongly encourages you to talk with your neighbor and try to work out a mutually agreeable solution before taking any action.

Many states, including Colorado, have the right of self-help. "In Colorado, property owners have the common law right to cut off branches and roots that cross over their property lines. Courts really don't want to take up valuable court time settling disputes between neighbors. The right to self-help encourages neighbors to solve their problems themselves. In Colorado, the neighbor who trims the tree is responsible for any expense associated with the trimming. Trimming back large and numerous branches can be expensive," according to the Hindman Sanchez law firm website (hindmansanchez.com).

The website advises that the right to self-help has limitations -- so proceed carefully. You may not enter the tree owner's land without permission. You can only trim to the property line and you cannot trim the tree in such a way that the tree is destroyed, according to Hindman and Sanchez. They go on to say that if the tree's health is not compromised, but the tree looks absurd after trimming, you probably have not destroyed it, in a legal sense.

I discovered a couple of other interesting items while researching this article. Did you know that the fruit on a branch of a neighbor's tree hanging over your property belongs to the tree owner? However, they can't come onto your property to pick the fruit without your permission. Apparently, courts are divided on who can have any fallen fruit!

Also, while you might think leaves from your neighbor's tree that blow into your yard are a nuisance, they are considered a natural product under the law. According to the realestate.findlaw.com website, "Even if the leaves cause damage, like clogging your gutters or pipes, you have no legal claims against the owner of the tree. Additionally, you are responsible for cleaning up any natural products that fall into your yard."

Please note I am not a lawyer; I'm just presenting information from sources that seem reliable. For complete references, please visit AlamosaTrees.net/newspaper.

I hope you all have cooperative neighbors!

"People in suburbia see trees differently than foresters do. They cherish every one. It is useless to speak of the probability that a certain tree will die when the tree is in someone's backyard.... You are talking about a personal asset, a friend, a monument, not about board feet of lumber." Roger Swain