



# ActionLine

A PUBLICATION OF THE FLORIDA BAR REAL PROPERTY, PROBATE & TRUST LAW SECTION

*Rule 4-1.14: Diminished Capacity  
Resolving Diminished Clarity*

*Local Government Land Use  
Restrictions: Mandating Ordinances*

*Recent Cases Deny Charitable Income  
Tax Deductions: CWA Revisited*

*Who Has Standing? A Trustee's Duty  
To Account*





## Real Property Division

### Post Storm Relief:

## Recent Statutory Amendments Help Private Property Owners Understand Statutory Rights to Prune, Trim, and Remove Trees

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Florida's trees provide shade, protect air and water quality, enhance shoreline resilience to storm impacts and provide food and shelter for species important to Florida's economy.<sup>1</sup> The state's interest in protecting our trees reverberates down to our local governments that have a united interest in preserving, protecting, and enhancing the state's tree canopy. However, each hurricane season tests a tree's perseverance and a homeowner's fear of fallen trees and damage.

Fla. Stat. § 163.045 (2019) expanded private property owner rights in maintaining and protecting property by prohibiting local entities from regulating tree pruning and removal. Legislators pressed for homeowner flexibility to quickly address immediate hazards caused by storm-damaged trees. The law prevented local governments from requiring applications, approvals, permits, fees, or mitigation directives for the pruning, trimming, or removal of a tree on residential property if the property owner obtained documentation that the tree presented a danger to persons or property from a certified arborist or a Florida licensed landscape architect.

However, the vague law garnered severe criticism, and litigation ensued. Chaos stemmed from diverse meanings for "documentation" and "danger"; developers circumventing green space and buffer creation; and community associations removing *dangerous* trees to protect association-maintained or owner-maintained water lines, roofs, windows, and structures. Further, absent community covenants requiring otherwise, associations and homeowners were not obligated to replace removals.

In *Vickery v. City of Pensacola*, 342 So.3d 249 (Fla. 1st DCA 2022), the City of Pensacola denied the Vickerys' request for a permit to remove an old oak tree. After denial, the Vickerys used Section 163.045 to remove the *dangerous* tree. In response, the City sought an injunction to save the tree arguing that the Vickerys' arborist's conclusions were insufficient, and the statute was ambiguously written. The trial court ruled in favor of the City, but the First DCA reversed the trial court's decision and dissolved the injunction, finding that the text, although vague, was not ambiguous.

The statute has now been amended to clarify terms and applicability. In response, local governments have issued policies to guide the statutory exemptions:

**The property owner must possess "documentation" at the time of removal:** "documentation" means a signed onsite assessment performed under the tree risk assessment procedures outlined in *Best Management Practices –Tree Risk Assessment*, Second Edition (2017) (the "TRA") by an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect; and

**The documentation must establish that the tree poses an "unacceptable risk" to persons or property:** a tree poses an "unacceptable risk" if removal is the only means of practically mitigating its risk below moderate, as determined by the TRA; and

**The tree is located on "residential property," not within a residential development.**

If the above requirements are met, local governments cannot require notice or a permit to prune, trim, or remove a tree. Ensure documentation is provided so the local government can determine whether the removal qualifies for an exemption to avoid a notice of violation.



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### Endnotes

<sup>1</sup> *Florida's Iconic Trees*, Florida Department of Environmental Protection, <https://floridadep.gov/Trees> (accessed October 12, 2022).