

WHO ACTUALLY OWNS THE RIGHT-OF-WAY?

Although the general public thinks of a corridor as being “owned” by a railroad, in reality the average rail right-of-way is often a hodge-podge of conflicting ownership claims, which begin to unravel when abandonment occurs. The railroad may own outright some portions of the corridor (which were acquired in “fee simple”) while it may have only restricted use of other portions (which are being held in “easement”).

Determining actual ownership requires a title search, which can be both complicated and time consuming. Preferably, a knowledgeable professional (usually a lawyer) will conduct the title search, either for the railroad, for an interested government body, or as a volunteer for a rail-trail advocacy group. However, if a professional is not already conducting a search, here is a thumbnail guide to conducting one on your own.

First (using old railroad maps if necessary), determine the name of the railroad that *originally* assembled the right-of-way. If you look under the name of the modern railroad, you may find nothing or be led astray.

Second, try to determine, however roughly, when the railroad acquired the right-of-way. Knowing this information will help you distinguish between the particular track segment you are interested in and any other segments built by the same railroad in that town, city or county. The tax assessor’s office, the library or a local historical society may be able to help with this.

Next, you need to go to the Land Records Division, usually found in your town hall, the county government offices or the courthouse. Locate the name of the railroad company in the Grantee Index. You will find, in chronological order, every piece of property acquired by the railroad, the name of the grantor of the property, the date of the transaction, and the method of transaction (deed, lease, condemnation, or other). You will also learn where you can find a copy of the title. The title, in turn, will tell you under what terms and conditions the railroad acquired the property from its previous owner, such as “fee simple” or “reversionary easement.”

The title will also describe the property in detail and may include a map (called a “plat”) of the property showing the right-of-way itself. Maps will help you verify that the property described in the title is actually in the correct right-of-way. A map will also make it easier to determine how many linear feet of the right-of-way are included in the total acreage covered.

If no map is attached, pay close attention to the description of the land since what you are after is not so much the acreage of the entire property transaction, but rather, the number of linear feet along the right-of-way. By adding up the length of the individual parcels, you can determine if you have indeed accounted for the entire right-of-way in question or if there is a gap in the puzzle.

If all goes well, you will have a pretty good idea of which portions of the right-of-way the railroad owns outright and which are scheduled to revert to adjacent landowners upon abandonment. However, keep in mind that land law is incredibly complex and even when you are done there may still be uncertainty and confusion that can only be cleared up by a lawyer and possibly litigation.

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This information was excerpted from Rails-to-Trails Conservancy's *Secrets of Successful Rail-Trails: An Acquisition and Organizing Manual for Converting Rails into Trails*. To order *Secrets of Successful Rail-Trails*, send \$19.95 (or \$16.95 for RTC members) plus \$4.00 for shipping the first book and \$1.00 for shipping each additional book to Rails-to-Trails Conservancy, 1100 17th St, NW, 10th Floor, Washington, DC, 20036, or (for Visa or Mastercard orders only) call 1-800-888-7747 (ext. 11).

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