

## Fact Sheet

# Who Actually Owns the Right-of-Way?

### TERMS DEFINED

**Fee simple:** An absolute ownership interest in property that is transferable without any limitation, restriction or condition.

**Easement:** A right to use the land belonging to another for a particular purpose, such as for a right-of-way.

**Deed:** A document sealed as an instrument of bond, contract or conveyance, especially relating to property.

**Lease:** A contract granting use or occupation of property during a specified period of time for a specified rent.

**Condemnation:** The process by which private property is taken for public use. The Fifth Amendment to the U.S. Constitution requires the payment of just compensation.

**Reversionary interest:** A future right to own or possess property that is subject to the present rights of another who is presently in possession of the property. The present owner's interest in property that is subject to a right of reverter is referred to as a "determinable fee."

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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 interests, which may begin to unravel upon abandonment of the right-of-way. The railroad may own outright some portions of the corridor (which were acquired in "fee simple") while it may have only the right to use other portions (which are 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, 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 instrument of conveyance. This title document, in turn, will tell you under what terms and conditions the railroad acquired the property from its previous owner, such as in "fee simple" or by "easement."

The title document 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 document 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 missing information. 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 revert to adjacent landowners upon abandonment. However, keep in mind that property law is 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.