



CHICAGO TITLE INSURANCE COMPANY

TOPIC:	<u>Railroads -- Basics</u>
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Identifying the Railroad Company and the Interest involved

A railroad company's interest may substantially affect the value and usability of property for its intended purpose. The interest may become apparent from reviewing the record legal descriptions of property to be conveyed, recorded maps of the property or a current survey, or other right-of-way or documents in the chain of title. If the extent of the railroad company's rights is of concern to your client, as is usually the case in commercial transactions, then additional investigation into the source of the claimed right-of-way may be required.

A determination of the actual interest and rights of the property owner vis-à-vis the railroad company may involve review of the granting instrument (voluntary grant, condemnation, or company's charter) as well as relevant case law (which may interpret the language of any of the above, or which may even involve the particular company and the document language specific to this company).

Easement or Right-of-way or Fee

The document creating the railroad right-of-way determines, directly or indirectly, both the ownership rights of the railroad company and the width of the right-of-way conveyed. The term "right-of-way" is a term of art. A right-of-way may encompass a limited purpose easement, or it may involve the entire fee simple absolute. McCotter v. Barnes, 247 N.C. 480; 101 S.E.2d 330 (1958). A deed reciting that the grantors did "sell and convey" to the grantee a described tract of land, with habendum "to have and to hold the same for **railroad** purposes in fee simple forever" conveys the fee simple and not a mere easement for **railroad** purposes." Craig v. Southern Ry. Co., 262 N.C. 538, *; 138 S.E.2d 35 (1964). Compare: International Paper Co. v. Hufham, 81 N.C. App. 606, *; 345 S.E.2d 231 (1986), in which only a "right and privilege" to construct a railway was granted. The terms (whether easement or fee, conditions, restrictions, and even width of the right-of-way) are determined, in order of priority, as outlined below. Tighe v. Railroad, 176 N.C. 244; Griffith v. Southern Railway Company, 191 N.C. 84 (1925). See also N.C.G.S. 39-1 which creates a presumption of fee simple conveyance.

(1) Voluntary grant – Deed or Deed of Easement:

As with any other type of conveyance, a deed of a railroad "right-of-way" may encompass only an easement (with a reversion or right of re-entry in the title owner of the underlying property) or it may include the entire fee simple absolute ownership of the property (as do most highway right-of-way deeds). The attorney must carefully read the actual granting instrument, if it is locatable, and apply the general rules of construction for interpreting conveyances. See, e.g.,

N.C.G.S. 39-1. A conveyance of bargain and sale or without any indication of limited purpose or restriction on use can be a fee simple, as any other conveyance. Many of these old documents creating the railroad company rights were in the 1800's; it may be virtually impossible to determine which document relates to which railroad section of track or which to a particular real estate tract that has been substantially divided over time.

The deed or right-of-way instrument may clearly define a right-of-way width, such as 200 feet. Or the instrument may define the width based on the tracks and grades as constructed, the usual provisions in 19th century railroad deeds. These typically described the interest conveyed similar to: "all right, title and claim to so much of our lands as may be occupied by the said Rail Road, its banks, ditches and works." Under the case of Hendrix v. Southern Railway Company, 162 N.C. 7 (1913), this may be expanded to the full width provided in the railroad company's charter (discussed below).

(2) Involuntary grant – Condemnation under Eminent Domain:

In contrast, condemnations under eminent domain must be specific about the property condemned and the title interest conveyed. Property interests acquired by condemnation should be for an easement for railroad purposes only, and not the full fee, since they are by definition involuntary. North Carolina State Hwy. Comm'n v. Farm Equip. Co., 281 N.C. 459, 189 S.E.2d 272 (1972). Beach v. Wilmington & Weldon Railroad, 120 N. C. 498, 263 S.E. 703 (1897).

Under N.C.G.S. 40A-3 (4) (and former 40-29 (repealed 1981) and C.S. 1733, Subsection 1, and C.S. 440, subsections 1 and 2), condemnation rights for railroad companies are: "[t]he width of land condemned for any single or double track railroad purpose shall be not less than 80 feet nor more than 100 feet, except where the road may run through a town, where it may be of less width, or where there may be deep cuts or high embankments, where it may be of greater width." In cities, they have to have license from the board of aldermen, board of commissioners, or other governing authorities of such town or city.

Under N.C.G.S. 62-220(5), the powers of railroad corporations include the right to condemn or purchase railroad roadbeds and "to lay out its road, not exceeding 100 feet in width, and to construct the same; to take, for the purpose of cuttings and embankments, as much more land as may be necessary for the proper construction and security of the road; and to cut down any standing trees that may be in danger of falling on the road . . . "

(3) **Railroad charter:**

The railroad charter granted to the railroad by the state may provide for a wider right-of-way. Griffith v. Southern Rwy., 191 N.C. 84, 131 S.E. 413 (1926). Many railroad companies (such as Seaboard Air Line Railroad and Southern Railway Company) have charters significantly larger, such as “one hundred feet on each side of the main track of the road, measuring from the centre of the same” for a total of 200 feet in width. In addition, many “conveyances” are simply presumed because (a) no conveyance is on record, (b) the tracks and works are in place, and (c) the owner has not begun an action for compensation within 2 year of the completion of the rail road. The terms of the conveyance would be according to the terms of the railroad company’s charter. Keziah v. Seaboard Air Line Railroad Company, 272 N.C. 299 .

(4) **Statutory presumptions:**

If no specific granting instrument (whether deed or condemnation) is locatable and the charter does not limit or define the rights or width of rights-of-way for the particular railroad company, the statutory presumptions would apply. Statutes in effect at least in the period from 1885 to 1900 provided for rights-of-way 100’ wide inside the city (as defined at that time) and 200’ wide outside of the city (again, as determined at that time). But the proof of which provision applies can be difficult to obtain and an onerous burden to a certifying attorney.

(5) **Contacting Railroad Company:**

The attorney (or client or surveyor, depending on the circumstances) can and should contact the railroad company directly and request information about particular segments of their track. They will probably take the most conservative approach (that they own the largest right-of-way possible) and they may be slow to respond. But certainly information about what they claim their right-of-way to encompass may save problems and even litigation for the client / insured owner in the future.

Often, by looking for the railroad name under case law (such as Lexis or Casemaker), a case outlining the specific provisions of that corporation’s charter can be located – because it has already been litigated. (Remember that old cases tend to abbreviate Railway or Railroad as “ry” or “rwy.”) The cases may also note citations to the specific year and Session Law where the charter was granted. At that point, a contact to the State Library of North Carolina, <http://statelibrary.dcr.state.nc.us/ncslhome.htm>, 109 E. Jones Street, Raleigh NC 27601-2807, you can obtain a copy of the charter (for a fee).

Also, using the Secretary of State web site, you can locate the main office of the company in order to determine who to contact. Most railroad companies that have been in existence within any part of the past 10 years can be found on the web site of the Secretary of State of North Carolina, <http://www.secretary.state.nc.us/Corporations/>

(6) **State Railway Maps:**

Maps, corridors, encroachment applications and other information about the primary railways and ownership can be obtained from the:

North Carolina Department of Transportation

Rail Division

1553 Mail Service Center (MAIL)

Raleigh, 27699-1553

1 South Wilmington Street (DELIVERY)

Raleigh, 27601

www.bytrain.org

FAX: (919)715-6580

TEL: (919)733-4713

TITLE EXCEPTIONS:

Therefore, best practice is for the attorney's opinion and the title insurance policy exception to include *all* rights of the railroad company, not just an unidentified "right-of-way." Most commercial clients want the actual location also identified by referencing the survey, if one. The survey may indicate that the right-of-way is wider on this particular property. Be cautious that the survey is consistent with the above rules. Your client's rights and ability to use the property as intended may be significantly affected if the above due diligence is not applied and the right-of-way actually claimed by the railroad company is in *not* consistent with the survey.

On a title insurance policy, the exceptions would be substantially as follows:

- (1) If the instrument creating the right-of-way is known and clearly identifies this as a right-of-way, not as a complete fee conveyance to the railroad company:

Railroad right of way recorded in Book _____, Page _____.

- (2) If the instrument is unknown so it is unclear what rights were actually conveyed:

Title to that portion of the land, if any, lying within the railroad right of way.

Or

Title to that portion of the land, if any, lying within the railroad right of way extending up to one hundred feet (100') on each side of the tracks or two hundred feet (200') in total width, whichever is greater.

- (3) If the right-of-way is shown on a survey, verified with the railroad company, the following can be added to better define the area:

[Above exception (1) or (2)], as shown on plat of survey by _____ [surveyor], dated _____ [date of survey], [and recorded in Book _____, Page _____, _____ County Registry if a copy of the survey, or a plat, is recorded, even if only as attached to a deed or other instrument].

Spur tracks

Typically the railroad company constructs and retains rights in the tracks and materials and use thereof, even though the fee owner holds title to the land. The agreements are normally not recorded. Therefore, exception would typically be taken, such as:

Rights of way for railroad, switch tracks, spur tracks, railway facilities and other related easements, if any, on and across the land.

Encroachments and licenses

Application can be made to the railway company for an encroachment agreement using the form and procedures such as those outlined at <http://www.bytrain.org/corridor/encroach.html>.

In situations where the railroad company either condemned the right-of-way or obtained only an easement in the granting document, then to the extent land covered by the right-of-way is not presently required for the purpose of the railroad, the fee owner may continue to occupy and use the property “in a manner not inconsistent with the full and proper enjoyment of the easement.” (Multiple cases are cited after the condemnation provisions of N.C.G.S. 40A-3.) So parking areas may be allowable, but not construction of permanent buildings and improvements.

Note, however, that if the railroad company is the actual owner of the *fee* according to the original deed of the right-of-way, then any use by another is an encroachment and a trespass.

Streets – crossings and alongside

City streets have priority over railroads, even if the railroads were there first. The North Carolina Supreme Court has held this philosophy through many cases, feeling that railroads were developed to facilitate commerce, so they should be subject to the other needs that develop because of that commerce. But the city cannot seriously impede the railroad’s ability to use the tracks. N.C.G.S. 160A-298. Utilities share this ability to use and priority over railroads. N.C.G.S. 62-237.

However, on state-system roads (any public roads other than city streets), the Secretary of Transportation is the final arbiter of these matters. N.C.G.S. 136-20.

Abandonment

Since railroads are in interstate commerce, an Order of Abandonment should be issued by the U.S. Surface Transportation Board since 1996 (created pursuant to 49 U.S.C. Sections 701-706, 721-727 and 10101-11901, with abandonment procedures at 10903-10906) or, previously, the Interstate Commerce Commission (188701995). However, these are never recorded in the local office of the Register of Deeds.

If the vesting instrument creates in the railroad company a *fee simple absolute* ownership, then like any other owner, they can convey the right-of-way property, subject to any restrictions or encumbrances and subject to their corporate authority. If they abandon the right-of-way, the title reverts to the owners of property on each side of the track to the centerline of the right-of-way, or to the public road edge if a public road runs along one side of the track. N.C.G.S. 1-44.2. Since

the railroad company is the owner of the property, a deed is recommended. They will typically execute a quitclaim deed and will charge a fee.

If the vesting instrument creates only an easement (or something less than fee simple absolute ownership) in the railroad company, N.C.G.S. 1-44.1 provides that the right-of-way is presumed abandoned if the tracks are removed and not replaced and the property is not used for railroad purposes for 7 years after removal. (This applies to easement, not fee simple, ownership. McLaurin vs. Winston-Salem Southbound Rwy., 323 N.C. 609, 374 S.E.2d 265 (1988))

However, the title to the underlying reversion remains vested in whoever has taken title *including to the centerline of the track* since the original vesting instrument. This may require searching the title to the adjoining property to assure its legal description has always included this strip of land. If the railway corridor has been carved out of the legal descriptions back in time, then this strip remains vested in the last owner to receive it who has not included it in their conveyance out. McDonald's v. Dwyer, 111 N.C.App. 127, 482 S.E.2d 165, *aff'd* 338 N.C. 445, 450 S.E.2d 888 (1994). Nelson v. Battle Forest Friends Meeting, 335 N.C. 133, 438 S.E.2d 718 (1993). That person must receive notice and an opportunity to be heard to prove that they have "good and valid title to the land" as provided under N.C.G.S. 1-44.2(b), overcoming the presumption of ownership under that statute.

CAUTION: As with street abandonments, often *utility companies have been granted easements and licenses* along even abandoned railroad rights-of-way. This is especially true with the fiber optic cable installations today. They are underground and, therefore, not necessarily visible easements. So this question should be asked, or an exception should appear in any title insurance policy until proven otherwise, such as:

Rights-of-way of utility companies, if any, in and to the _____ [width] abandoned railroad right-of-way [as shown on survey, etc.]

Many abandoned railroad rights-of-way are being conveyed to local rails-to-trails conservation authorities pursuant to the National Trails System Act of 1983, 16 U.S.C.A. 1241 *et seq.* and, in North Carolina, the "Rail Corridor Preservation Act" of 1988, enacted as N.C.G.S. 136-44.36A to -44.36D (1993)

These conveyances, and the necessary parties to join into the conveyances, are governed under the same conveyancing rules outlined above. If the railroad company only owns an easement (whether by granting instrument or because of condemnation), then the owners of the underlying fee and other interests must join in the conveyance. If the railroad company owns the actual fee, then their deed may be sufficient to convey fee title. These conveyances would also be by deed from all such title owners (whether the railroad company, the adjoining owners, the holder of the reversionary or other interests since the initial railroad conveyance).

No adverse possession claim will lie against a railroad. N.C.G.S. 1-44

References:

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Carriker, S. David, Editor, "North Carolina Railroad Map" with explanatory text (1991).

Carriker, S. David, North Carolina Railroads: The Common Carrier Railroads of North Carolina (1989)

Laite III, Gilbert C., "Railroad Issues Affecting Real Property Practitioners," Breaking Out Together, North Carolina Bar Association, May, 2000. (Including Charter of North Carolina Rail Road)

Trelease, Allen W., The North Carolina Railroad, 1849-1871, and the Modernization of North Carolina, UNC Press, 1991.

Railroad Companies in North Carolina

Suggestion: Often, by looking for the railroad name under case law (such as Lexis or Westlaw or Casemaker), you may find a case outlining the specific provisions of that corporation's charter.

Also, using the Secretary of State web site, you can locate the main office of the company in order to determine who to contact.

NORTH CAROLINA RAILROAD COMPANIES		
<u>Railroad</u>	<u>Chartered</u>	<u>Some History & References</u>
Atlantic Coast Line Railroad Co.		v. Bunting, 168 NC 579 (1915) Formed by merger of Wilmington & Weldon and others, 1900 Merged with Seaboard Air Line in 1967 to form Seaboard Coast Line
Aberdeen & West End Railroad		Blue v, 117 NC 644, 23 SE 275 (1895)
Carolina Central Railroad Co.		v. McCaskill, 94 NC 746 (1886)
Winston-Salem Southbound Ry. Co.		McLaurin v, 374 SE2d 265, 323 NC 609 (1988)
CSX Transportation Corporation		Result of multiple mergers Can condemn only through easement

Asheville & Tennessee Railroad Company		Priv. L. Ch. 340, Sec 9 (1887)
Union Square to 1 mi SE of Raleigh	1833	Private
Raleigh and Gaston Railroad Company(to Roanoke River to the NE)	1834	Priv. L., ch. 25 (1835) v. Davis, 19 NC (2 Dev. & Bat.) 452 (1837)
Wilmington and Weldon	1834	Private Took over Wilmington & Raleigh Railroad Company (1835) Merged with others to become Atlantic Coast Line Railroad, 1900 Then CSX Transportation Corporation Beach v., 120 NC 498, 26 SE 703 (1897)
Wilmington & Raleigh Railroad	1833	Priv. L., Ch. 78, art. 14 & 18 (1833) Priv. L. ch. 30 (1835) – just going to Weldon Priv. L., ch. 235, sec 2 (1855)- changed name to Wilmington & Weldon railroad Eminent domain for railroad purposes only
Petersburg Rail Road Company		Priv L. ch. 56 (1830)
North Carolina Central Seaport Railway Company	1840	Private
Greenville and Roanoke Railroad Company	1840	Priv. L., Ch. 74 (1833)
Roanoke and Yadkin	1840	Private
Campbellton and Fayetteville	1840	Private
Cape Fear, Yadkin and Pee Dee	1840	Private
North Carolina Railroad	1849	Chartered Sec 29, Act of 1848-1849, Ch 82 100' on either side of center line 1871-1901 lease to Richmond & Danville Railroad, then 99 yr lease beg 1895 Bought by State 1998
Richmond & Danville Railroad		Merged into Norfolk Southern Railroad
Norfolk Southern Railroad		Bought Richmond & Danville Railroad
Raleigh and Columbia Railroad Company		Pub. L. Ch. 40 Sec 18 (1836) Can acquire in fee simple

Seaboard Air Line		Merged into Seaboard Coast Line, 1967 Now CSX Transportation Corporation
Seaboard Coast Line		Merger of Atlantic Coast Line, Seaboard Air Line, 1967 Now CSX Transportation Corporation
Raleigh, Charlotte & Southern Railway		v. McGuire, 171 NC 277, 88 SE 337 (1916)
Western North Carolina Railroad		1985 sold to State
Raleigh & Augusta Air-Line R.R.		v. Sturgeon, 120 NC 225, 26 SE 779 (1897)
Norfolk & Carolina RR		Shields v., 129 NC 1, 39 SE 582 (1901)
Suffolk & Carolina RR		Shepard v., 140 NC 391, 53 SE 137 (1901)