

Appendix A: *Researching railroad corridor property ownership*

1. Research rail line history

A thorough deeds search is essential to determining a railroad's corridor property interests. The information that you compile will provide insights to the problems to be encountered in acquiring or gaining public access to a railroad corridor under state law. This deeds research is not needed if you are able to obtain federal interim trail use under National Trails System Act Section 8(d) railbanking.

To begin your search, you must first establish the history of the rail line ownership. Most rail lines have changed names and ownership several times from their origins to the present. It may be possible to obtain this information from a local historical society or local history books at the library. Be sure to determine the dates of railroad construction and changes of ownership.

The line's history also can be obtained by writing to North Carolina Rail-Trails, Drawer 124, 703 Ninth Street, Durham NC 27705. Identify the line by stating the present or most recent railroad operating company, the county or counties involved, and the communities located on the line.

With the rail line ownership history in hand, you will conduct your deeds search at the Registrar of Deeds office in the county or counties that contain the rail corridor.

2. Compile deed index list

Deeds are listed in Index Books two ways: Grantor (the seller) and Grantee (the buyer). Locate the Grantee Index Book which covers the years during which the rail line was established. At the front of the book will be an alphabetical listing of Grantees.

Look for the name of the original (earliest) railroad company. Any deeds that were registered will be reference by page numbers in the same Grantee Index Book. If you find nothing, also look under "Railroads" as deed references may be lumped together under that index.

Turn to the given page or pages and again look for the name of the original railroad. Individual deed listings will name the Grantor, plus the Deeds Book Number and Page Number where the deed is recorded. Make a list of these Grantors with Book and Page numbers.

Next, search Grantee Index Books that cover the years that a successor railroad company took over the line. Repeat the above steps to obtain Deed Book and Page listings. Then repeat again for each subsequent railroad company up to the present. The result will be lists of deeds granted to all railroad companies over the history of the line.

Ye Olde
Grantee
Index

Alpha Index

Alpha Listing

Page 37

Ye Olde
Deed Book
No. 27

Page 116

Ye Olde
RR Deed

Page 117

3. Read and study deeds

You now are ready to study the individual deeds. You can do this in the original Deed Books or, in many counties, on microfilm copies of the Deed Books.

The deed will begin by identify the Grantor (seller), the Grantee (buyer) and the date of the transaction. It will then state what money or other consideration was paid to the Grantor. Next will be a description of the property which established the location and size.

The property description can be very accurate, such as a town plat lot number or a surveyor's metes and bounds measurements. More likely, century old deeds will have vague descriptions, such as "a strip of land 100 feet wide across grantor's approximate 25 acres." Distances on each side of the railroad's centerline survey was another common description. Long-gone trees, rocks, posts and other contemporary landmarks were commonly used. Finding the exact location and boundary can tax the skills and patience of experienced attorneys and surveyors.

Toward the end of the deed is the heart of matter: The terms and conditions on which the property was conveyed to the Grantee. Read this part carefully. The language needs to be picked apart and examined.

Despite language that may state that property rights are granted forever, what it may be

granting is only a right-of-way, which the state courts treat as a reversionary easement. Look for words that limit property use solely to "building a railroad," "establishing a right-of-way" or "operating a railroad." That is another test for easement.

Some deeds that grant fee simple title may have conditional clauses that limit property use only to railroad operations and business. Even if the railroad paid market value for the property, this determinative clause could return ownership to the grantor's original parcel if any attempt is made to use the property for other than railroad purposes.

Make notes of your research on each deed. It is not unusual to find both right-of-way easements and fee simple deeds on the same rail line. There is an equal possibility that there are gaps between recorded property deeds. If the gaps are many and large, this indicates that a right-of-way was established by state charter grant. Unless the present railroad can come forward with unrecorded deeds, the courts will most likely treat the gaps as reversionary right-of-way easements.

4. Determine what RR has sold

To complete the property ownership study, you will need to identify what properties, if any, the railroad companies have sold off over the years. For this, go to the Grantor (seller) Index Books. Look for names of the railroad companies that operated the line over the many decades. Follow the Grantor listings to the Deed Books, just as you did with the Grantee search.

Up-chain vs. Down-chain

This method of deeds research is called an up-chain title search, which is the opposite of down-chain title searches that attorneys normally conduct. A down-chain search usually does not extend back in time more than 40 or 50 years, or until the attorney is confident a bonafide chain of title is established. The reason for reversing this procedure on railroad properties is that most of the pertinent information was recorded when the rail corridor was established. Down-chaining from the present to the railroad's origins would be much more difficult and time consuming. It should be noted that this limited up-chain search does not detect conflicting deeds that may have been overlaid on the earlier railroad deeds. Because North Carolina is a "race" state, the earliest recorded deed takes precedence.