

## **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 a hodgepodge of different legal entities that do not come unraveled until abandonment. In general, the railroad will own some portions of the corridor outright (in fee "simple") while it will only have restricted use of other portions ("easements").

Determining actual ownership requires a title search. It is preferable for a knowledgeable professional (usually a lawyer) to conduct a title search, either for the railroad or for a government body or as a volunteer for your group, since title searches are difficult, confusing and time consuming. Also, you can ask a friendly government agency that may ultimately acquire and manage the right-of-way to conduct a search for you. However, if you are not able to get a professional to conduct a search for free, here is a thumbnail guide to conducting one on your own.

First (using old railroad maps if necessary), determine the name of the railroad which 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. This will help you distinguish between the particular track segment you are interested in and any other segments built by the same railroad in that county. The county 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 town hall or the county 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 revisionary 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 on the right-of-way. A map will also make it easier to determine how many linear feet of the right-of-way is 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 your 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.

### **What If the Public Already Owns the Corridor?**

Occasionally rails-to-trails advocates come across an abandoned railroad corridor which, upon investigation, turns out is already in public ownership.

The right-of-way may have been purchased by the state Department of Transportation for possible future road construction or by a water or sewer district for a pipeline (which may or may not have been built.) It may have come into state or county or municipal ownership because the railroad defaulted on its tax payments or it may have been donated by the railroad or another corporation.

Although the corridor is in public ownership, the corridor may be no closer to actual trail usability than if it were still owned by the railroad: bridges and trestles may be missing, the right-of-way may be overgrown and there may be no signs or public information whatsoever.

If you are working in such a situation, you should skip Chapters 7 and 8 but otherwise follow the step-by-step procedures outlined in this manual. You have a major advantage in that the corridor is not likely to be broken up, but you still have a difficult task ahead because the current owner may have no inclination to operate it as a trail.