
 **OLD REPUBLIC TITLE**


Railroads and Title Insurance
 KLTA Title School 2020

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 OLD REPUBLIC INSURANCE GROUP


Railroad Issues, Generally

- Insuring title to a former railroad right-of-way (“ROW”) is typically considered an extra-hazardous risk.
- Various methods of acquiring title results in various and competing claims of ownership once land is no longer used for ROW purposes.
- Main areas of concern:
 - How to determine a railroad company’s property interest.
 - Fee Simple vs. Easement
 - What happens with a railroad ROW line is abandoned.

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What Interest did the Railroad Acquire?

- Generally, 3 possible options: Fee simple; Limited fee; Easement.
- How do we know? Go to the source/root of the railroad’s title.
 - Search back to the point where the railroad acquired its interest in the land.
 - Search back to patent may be necessary.
- Generally, 3 primary ways that railroad companies acquired their interests:
 - Federal land patents (directly or via state grants);
 - Private deeds;
 - Condemnation.

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A Brief History...

Federal Land Grants

- Beginning in the early 1800s, Congress granted "rights-of-way" and checkerboard parcels to private railroad companies.
 - ROW extended through the land;
 - Congress divided up surrounding land into squares; Granted land to railroads in checkerboard pattern, retaining ownership of "every other" square.
- Railroad acquired title to checkerboard parcels in fee.
 - Idea was that railroad would sell of extra land to raise capital.
 - Ended by late 1860s.
- Many Congressional grants issued to private railroad companies between 1852 and 1860.
 - Right-of-way line is deemed limited fee.
- 1862: First general right-of-way statute passed.
 - Grants under this act conveyed limited fee.
 - 50 feet on either side of existing line, for example.



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Federal Land Grants

Federal Land Grants

- 1875: Second General Railroad Act of 1875
 - Tide began to turn on railroads and unlimited expansion.
 - Interests of settlers trumped railroad development.
- Grants to railroad under the 1875 Act conveyed easement interests only.
 - *Brandt v. United States* (2015).
 - Railroad only obtained an easement for ROW purposes over public land owned by the federal government.
 - When the land was patented, government issued patent subject to ROW easement.
 - Owner acquired title subject to the easement.
- 1988: Rails to Trails Act
 - Congress expressly reserves a reversionary interest in any right-of-way easement it grants to a railroad over public land after 1988. (16 USC 1248(c)).



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Federal Land Grants

Federal Land Grants – Summary

- Pre 1871: Limited fee and fee;
- 1871-1875: Review specific Congressional act;
 - Post 1875: Easement only;
- Post 1988: US govt. retains reversionary interest in a ROW easement.



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Private Grants/Conveyances

- Railroads sought to acquire land directly from land owners.
 - Chain will typically show a private deed from the owner to the railroad.
- Main issue: What interest was conveyed?
 - Deed language varies greatly, but the language will determine whether railroad acquired full fee simple title or easement interest only.
 - Often have to determine the Grantor's intent.
 - Can be tricky; Don't typically look to intent for insuring purposes.
 - Case law analysis is typically needed.
 - Holdings may vary state by state.



Private Grants/Conveyances

Kansas Case Law Holdings:

- *Jenkins v. Chicago Pacific Railroad Corporation*: "When a railroad acquires a strip of land for right-of-way, it generally takes only an easement; this is the rule whether the strip is acquired by condemnation or deed." 306 Kan. 1305 (2017).
 - Even covenants of warranty in the railroad company's deed and language designating the right acquired as a fee are not necessarily controlling on whether the railroad company acquired an easement.
- *Stone v. U.S.D.*: The general rule is that deeds purporting to convey to railroads a strip, piece, parcel, or tract of land which do not describe or refer to its use or purpose or directly or indirectly limit the estate conveyed are generally construed as passing an estate in fee. 278 Kan. 166 (2004).
 - Deed initially conveying land to railroad conveyed land in fee simple absolute, as deed did not contain any use restriction or reversion clause.
- *Schaenberger v. Missouri Pacific R.R. Co.*: Fee simple absolute title is conveyed where the warranty deeds granting land to a railroad are void of any use limitations or reversion clauses. 29 Kan.App.2d 245 (2000).
- *Roxana Petroleum Corporation v. Jarvis*: "Right of way," as applied to railroad company's interest in land, means "easement." 127 Kan. 365 (1929).



Private Grants/Conveyances

General Takeaways:

- Deed language vital in determining what interest railroad acquired.
- It is possible for railroad to acquire fee simple title.
 - No restrictions on use; Not a strip of land.
- Right-of-way = Easement.
- Why it matters?
 - Interest acquired by railroad will determine what happens to title when railroad ceases to use the land.



Condemnation

- Interest conveyed depends on state statute in place at the time of the condemnation.
 - KSA 66-501: Every railway corporation shall have power... (3) To lay out its road, not exceeding one hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of the road... making compensation therefor; and may take property under the power of eminent domain in the manner set forth in K.S.A. 26-501 to 26-516, inclusive.
 - Original version dates to 1868; Revised in 1923 and 1963.
 - Case law analysis on interest acquired.
 - May also depend on railroad's corporate charter.



What Happens when the Railroad Stops Using the Land?

- Country is losing active railroad lines.
 - Remaining land corridors are very valuable, resulting in competing interests for use.
- What happens when the railroad ceases to use its ROW line?
 - Title to abandoned ROW depends on what interest railroad acquired prior to abandonment.
- Abandonment has 2 primary issues:
 - Federal Surface Transportation Board ("STB") jurisdiction;
 - State law abandonment.



Abandonment – Federal Law

- Surface Transportation Board Jurisdiction
 - Created in 1995 as successor to the Interstate Commerce Commission.
 - ICC created in 1887 to regulate railroads; eventually charged with overseeing railroad abandonment.
 - STB now has broad regulatory oversight of railroads, including abandonment of rail lines.
 - STB has exclusive jurisdiction over railroad ROW lines.
 - But no jurisdiction over spurs, industrial teams, switching tracks, or side tracks.
- Rails to Trails Act
 - Enacted to preserve transportation corridors for future use.
 - Railroad easements deemed not abandoned, but "rail banked" for interim use as trails.



Abandonment – Federal Law

STB Abandonment Procedure

- Railroad files application for abandonment;
- Within 30 days, any groups under Rails to Trails are required to file a rail-bank request.
 - **Scenario 1:** Request filed. Railroad company chooses to negotiate with group.
 - STB issues Notice of Interim Use (NITU).
 - Parties have 180 days to finalize rail-bank agreement.
 - Agreement signed; corridor rail-banked.
 - **Scenario 2:** No rail-bank request filed or railroad chooses not to negotiate agreement.
 - SBT issues abandonment order.
 - Railroad company sends letter confirming abandonment.
 - ROW line is deemed abandoned from *federal law* regulations.
 - Issue now falls to state law.



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Abandonment – State Law

Once ROW line is abandoned by STB, state law abandonment issues take over.

- Issue 1: What constitutes abandonment?
- Issue 2: What happens to title of ROW property once abandoned?

What constitutes abandonment:

- KSA 66-525(a): A railroad right-of-way shall be considered abandoned when:
 - (1) The tracks, ties, and other components necessary for operation of the rail line are removed from the right-of-way following the issuance of an abandonment order by the appropriate federal or state authority;
 - (2) if, within two years after the exercise of such an order, removal of such components is not completed and railroad operating authority is not restored or reissued by an appropriate court or other federal or state authority; or
 - (3) if no rail line is placed on the right-of-way within 10 years after the right-of-way is acquired. A railroad right-of-way shall not be considered abandoned if the railroad company or any other entity continues to use the right-of-way for railroad purposes after abandonment authority has been issued.



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Abandonment – State Law

What happens to title of ROW property following abandonment?

- Depends on the interest acquired by railroad.
 - **Fee Simple Title:** Where railroad acquired full fee simple title, railroad retains ownership and is able to freely transfer land. *Stone v. U.S.D.*, 278 Kan. 166 (2004).
 - **Limited Fee:** Where railroad acquired limited fee or fee with restrictions, title will typically depend on the terms of the instrument creating the conveyance. Case-by-case analysis needed.
 - Example: Deed vesting fee simple title subject to reversionary interest in Grantor's heirs.
 - **Easement:** Where railroad acquired only an easement interest, upon abandonment, the easement is terminated and the property reverts to the owner of the servient estate. *Pratt v. Griese*, 196 Kan. 182 (1966).
 - Railroad does not retain title;
 - Title re-vests in the abutting owner/owner of the servient estate at the time of abandonment.
 - **Rails to Trails:** Federal government retains reversionary rights for any ROW grant after 1988.
 - Railroad acquires easement, but title does *not* revert back to adjoining owners upon abandonment.



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Insuring Title to Former ROW Land

- Extra-hazardous risk.
 - Check with your underwriter to verify insuring requirements.
- Issues to keep in mind:
 - How did the railroad acquire title?
 - What interest did the railroad acquire?
 - Was the land used for ROW purposes? Or was it a spur line?
 - Has there been abandonment of the ROW line?
 - First, federal abandonment through STB.
 - Then, state law abandonment.
 - Effect of abandonment on title?
 - Reversion to abutting owners?
 - What's been recorded in the land records?
 - QCD from railroad.
 - Does that even do any good?
 - STB abandonment.

- Other issues:
- Changes in railroad companies through the years.
 - Mergers, bankruptcies, receiverships, etc.
 - STB may be a good source of information regarding the railroad's acquisition, succession, and abandonment.
 - Most railroad companies also include real estate departments with helpful information.



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Questions?

Thank you!



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