

railroad abandons the rail line, ownership of the right-of-way reverts to the current owner of the parcel of land that contained the easement when it was granted. In some instances, the railroad was granted a “license” to use the land for a railroad, which is even less evidence of railroad ownership of the land. A license does not transfer legal title to the land, but rather is an equitable right to use the land for a period of time.

The first step in determining who owns the land is reviewing the real property records at the office of the county recorder. If the adjoining landowner can show any legitimate, colorable title of ownership, a “quiet title” action can be filed in the county common pleas court. A quiet title action asks the court to declare that the claimant is the owner of the land. However, legal advice should be obtained regarding this procedure as it can be time consuming and costly. Generally, the easement document must contain language specifically stating that the property reverts to the owner in order for the adjoining property owner to regain the property upon abandonment. In most instances in Ohio, the adjoining landowner is in a position where the land must be “bought” from the railroad.

## Negotiating with the Railroad

Once it is determined that negotiations with the railroad must take place to purchase the land, the next major step is to contact the right person. This can be a formidable task in itself and will probably require several phone calls. Unless you already have a contact point, call the local railroad office and ask for the phone number of the real property department for the company and go from there.

If the railroad is interested in selling the land, it likely will want to sell large tracts of land at one time, often from road to road. This may require several landowners joining together to buy the land. These groups of landowners can be formal or informal, but they should have a written agreement among themselves that spells out each owner’s rights and responsibilities. You are also encouraged to have each interested landowner contribute money into an escrow account to cover the cost of the land and other expenses.

It is not necessary that you legally “incorporate” this

group of landowners. However, it will be necessary to have a contact person for the group.

Beyond this point, there will be negotiation of the contract of purchase. Often, the railroad company will have a standard form, but it is recommended that legal counsel review the contract so that all terms are understood.

If there is more than one landowner involved in the purchase, after the larger tract of land is transferred into the name of one owner, it will be necessary to have the land surveyed and divided among the adjoining landowners. This will be an additional expense that the parties should know about beforehand.

## Summary

While the process of purchasing adjoining railroad right-of-way seems complicated, it can be done. This can best be accomplished by being informed and organized. There are already groups that are organized and prepared to purchase a railroad right-of-way and convert it to a public purpose. In most instances, the railroad will sell it to the first purchaser at the highest price.

If a farmer is tired of seeing what appears to be an abandoned railroad right-of-way beside his property and is interested in using the land, the farmer should start by investigating who legally owns the right-of-way and whether the railroad is abandoned.

*This brochure is meant to be an educational tool and should not be perceived as legal advice. If you feel that you need more information regarding an incident involving Abandonment of Railroad Right-of-Way, please contact an attorney.*

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# Abandonment of Railroad Right-of-Way



## Introduction

Thousands of miles of railroad tracks crisscross Ohio. At one time, these tracks were frequently used to carry a large volume of freight and passengers. With the decrease in train traffic, many railroad right-of-ways have fallen into a state of disrepair or have been abandoned.

When a right-of-way is abandoned, people frequently have different ideas about how the land should be used. Most often, the adjoining landowners would like to acquire ownership of the land. Others feel that the right-of-ways should be converted to multi-purpose recreational uses, such as bikeways and trails. Still others feel the land may be needed someday for speed rail service or utility easements. With all these competing interests for an abandoned railroad right-of-way, the adjoining landowner often loses out. The groups competing for the land often have government funds available and an organized effort underway before the adjoining landowner even knows the land is available. General information follows that may be useful to a landowner when considering the purchase of a railroad right-of-way.

## Abandonment

Before a railroad company can sell a right-of-way, it must be legally “abandoned”. An adjoining landowner may consider the right-of-way abandoned because there are no longer any trains running on the tracks, the fences separating the rail bed from adjacent property are broken down, or the brush in the right-of-way is overgrown. Some landowners may be using the land for their own purposes, even though they have no legal title to it. This is not recommended.

“Abandonment” of a railroad right-of-way is a special procedure outlined in the Ohio Revised Code and the Federal Code. Most railroads operate under the jurisdiction of the Surface Transportation Board (STB) and must follow the procedures in the Federal Code. The Federal Code requires that a railroad company file a petition with the STB asking for permission to discontinue the line. Generally, the STB will grant the request, but it must first find that the abandonment will not affect the present or future public convenience. During this procedure, notices are sent to the Ohio Department of Transportation and interested rail

users. Also, notices are published for three consecutive weeks in the Federal Register and newspapers in the county where the track is located. If no protest is filed, the line will be abandoned in approximately 120 days.

In the rare instance that a rail line is not involved in interstate commerce, the Public Utilities Commission of Ohio (PUCO) has jurisdiction over abandonment. The procedure is similar to that required by the STB. A petition must be filed with the PUCO asking for discontinuation of the rail line. The PUCO will grant the petition if it is satisfied that the proposed abandonment is reasonable, having due regard for the welfare of the public and the cost of operating the service. Under Ohio law, a notice of the filing of a petition is published for four consecutive weeks in a newspaper in the county where the track is located.

It is difficult to tell whether a rail line has been legally abandoned. A rail corridor can be abandoned even though the tracks and ties are still in place. Conversely, the rail line may not be abandoned, even though the tracks and ties have been removed. It is best to check with the Ohio Department of Transportation rail office or the railroad company office to see if a particular rail line is abandoned.

## Competing Interests

The adjoining landowner often faces an uphill battle in trying to acquire ownership of a railroad right-of-way. The difficulty arises because, under federal law, the U.S. Secretary of Agriculture and the U.S. Secretary of the Interior encourage the conversion of unused rail lines to recreational trails. The Ohio Department of Natural Resources also has an interest in seeing that abandoned railroad right-of-ways are turned in recreational trails. A goal of the Ohio Department of Natural Resources Trails Plan is to have an accessible trail within 10 minutes of all Ohioans. National and state funds are available to interested groups. In addition, a portion of the federal gas tax is set aside for the conversion of rails to trails. Currently, several million dollars are available each year in Ohio for creation or improvement of trails.

In addition, federal law provides that a public agency can file a petition for a “public use condition” during the abandonment process. A public use condition gives public agencies the right to negotiate with the railroad exclusively

for 180 days for the purchase of the right-of-way. During this time, bridges, culverts, surface material, and any other features essential to building a trail must be kept intact.

If a certificate of interim trail use is issued the railroad and trail manager can negotiate for railbanking. “Railbanking” is a voluntary agreement between the railroad company and a park agency that permits an out-of-service railroad corridor to be used as a trail until such time that the railroad company might use it again for rail service. Because a “banked” corridor is not considered abandoned, it can be sold, leased, or donated to the trail manager.

In the event that the right-of-way is going to be purchased by a public agency, it is suggested that efforts shift to issues of concern such as the proper fence, security and trash receptacles. These concerns can be directed to the County Commissioners or raised at public meetings.

## Ownership

It often is difficult to tell who actually owns the railroad right-of-way. Land ownership records are old and are sometimes incomplete, illegible or inconclusive. Subsequent mergers of railroad companies further confuse the issue of “who owns the land”. In the last few years, there have been numerous lawsuits on this issue.

The confusion surrounding ownership exists because railroad companies acquired real estate by several different methods: purchase of a fee simple interest, grant of an easement of license, adverse possession or appropriation (eminent domain). If the railroad company acquired the land in fee simple, it is the sole owner of the land and would have the right to sell the land after abandonment, barring any orders being filed in the abandonment process. To purchase land from a railroad company who owns it in fee simple, it is necessary to negotiate a contract that will eventually result in the purchaser obtaining a deed for the land. The deed will likely be a “quitclaim” deed. This type of deed provides ownership, but the land is transferred to the purchaser subject to any future claims of better title that may be asserted against the purchaser’s ownership. It is suggested that legal advice be obtained regarding the effects of different types of deeds.

There are instances where the railroad is granted a “right” to use the land for railroad purposes. This is commonly referred to as an easement. Arguably, when the

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