

The Vacation and Dedication of Streets and Roads

Understanding Public Rights, Private Ownership, and the Underwriting of Vacated Roads

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What is a Road Vacation

1. A road vacation is the formal governmental act by which a public entity,
2. permanently extinguishes the public's right to use a public street, highway, alley, or other public right-of-way, thereby,
3. terminating the public easement or public interest in the roadway.

A Vacation **does not itself operate as a conveyance**; ownership depends on the preexisting chain of title and the nature of the public's original interest in the roadway. That principle guides the underwriting analysis in every road vacation file.

Why Vacated Roads Create Title Problems

- Former roadbeds frequently appear in legal descriptions
- Survey/title conflicts are common
- Municipal interest may survive
- Private rights often survive vacation
- Access problems can arise unexpectedly
- “Paper streets” create underwriting uncertainty
- Developers frequently seek omission of roadway exceptions

What is a Road Dedication?

1. A dedication is the voluntary appropriation of private land by its owner for a public use,
2. coupled with an acceptance by the appropriate public authority, thereby creating public rights in the property.
3. Another way of saying it: the owner's voluntary offer to devote private land to public use, which becomes effective upon acceptance by the appropriate governmental entity.

Road Dedications and Road Vacations are Opposites

Dedication

- Donation of land for public use
- Can occur by:
 - Filed map
 - Public use
 - Condemnation
 - Legislative act
 - Express grant

Vacation

- Procedure extinguishing public rights in a street

Critical Principle:

- Vacation usually extinguishes only PUBLIC rights — not PRIVATE rights.

Dedication Explained

What Creates a Public Street?

Methods:

- Depiction on filed map
- Continuous public use (20+ years)
- Express grant
- Condemnation

Important Distinction

- Offer of dedication $\neq$ acceptance
- Municipality may accept years later

Offer vs Acceptance

“Once an Offer of Dedication, Always an Offer”

- Municipality may accept later
- Taxing land inconsistently does NOT defeat dedication
- Non-maintenance does NOT necessarily defeat dedication
- Road may remain a “paper street”

Underwriting Danger

A street appearing abandoned may still be legally public.

Road Dedication vs. Road Vacation

Dedication:

- Creates public rights.
- Usually initiated by the landowner.
- Requires acceptance to become effective as a public street.
- Generally, burdens the underlying fee with a public easement (unless the fee itself is conveyed).

Vacation:

- Terminates public rights.
- Initiated by the governmental entity.
- Requires formal governmental action (typically an ordinance in New Jersey).
- Generally, removes the public easement but does not determine or transfer the underlying fee ownership.

Paper Streets

What Is a Paper Street?

A road shown on a filed map but:

- Never opened
- Never improved
- Never maintained
- Possibly never accepted

Why It Matters

- Public rights may still exist
- Adjoining owners may have private easement rights
- Future municipal acceptance remains possible

Should you Require a vacation pursuant to N.J.S.A. 40:67-19.32?

Nature of Municipal Interest **Easement vs Fee Title**

Municipality may hold:

1. Public easement only
2. Full fee title

Why This Changes Everything

If municipality owns fee title:

- Vacation alone may NOT revest title automatically

If municipality owns easement only:

- Vacation extinguishes public easement

Adjoining owners may own to centerline

How to Determine if a Street is Public?

What Municipal conduct tends to show that a street is public:

- 1.** Subdivision approval by resolution and a subdivision map or filed map showing the street.
- 2.** Depiction of the street on a tax map.
- 3.** Letter from municipal engineer, municipal clerk, or municipal attorney.
- 4.** Street shown on official map.
- 5.** Municipality maintains and repairs the street.
- 6.** Recorded Deeds of Dedication.

What is the Centerline Rule?

Title is to the Centerline

General rule:

- A Conveyance to the sideline includes title to the centerline; thus, In New Jersey, the common-law presumption is that when a grantor conveys land abutting a street or highway, the conveyance includes the grantor's interest to the centerline of the roadway.

Unless:

- Deed expressly reserves roadway.
- Municipality owns fee title.

Private Rights Survive

A Road Vacation Does NOT Eliminate Private Rights

Private rights may include:

- Access easements
- Utility rights
- Drainage
- Cable/telecom
- Cross-access

Important Underwriting Concept:

- A vacated street can still burden title

Utility Rights

Utility Easements Usually Survive

- Utility lines may remain in former roadbed
- Unrecorded utility rights may exist
- Ordinances often preserve utility rights

Underwriting Practice

- Never assume vacation extinguished utility rights.
- **N.J.S.A. 40:67-1(b)** provides that every vacation ordinance adopted must “expressly reserve and except” the rights of public utilities and cable television companies

Access Issues

A Road Vacation Can Create Landlocked Parcels

Vacation may:

- Eliminate legal access
- Reduce frontage
- Create nonconforming lots

Practical Concern

- Vacating roadway rights may impair insurability.

Cul-de-Sac Problems

Road Vacations at the Terminus

Questions:

- Who owns wedge-shaped area?
- Who retains access?
- What private rights survive?

No Hard-and-Fast Rule

- Fact sensitive analysis required.

Marginal Streets:

Special Rule for “Marginal Streets”

- Marginal/boundary streets:
- May vest entire width in adjoining owner
- Not merely to centerline

Common Example

Street bordering:

- River
- Municipal boundary
- Exterior subdivision edge

County Roads vs Municipal Roads

County Roads Require Separate Analysis

Statutes:

- N.J.S.A. 27:16-28
- Different procedures apply

Key Issue

Did county acquire:

- Easement only?
- Fee title?

If fee acquired:

- Conveyance from county may be necessary

Colonial Roads & Plank Roads

Historic Roadway Issues

Colonial roads:

- Often 66 feet or 99 feet wide
- Created by legislation

Plank roads/turnpikes:

- Frequently involved fee ownership

Title Danger

- Assuming municipality held only easement.

Vacation Ordinances

What Must Be Reviewed?

Underwriting should require:

- Certified ordinance
- Proof of adoption
- Proof of recording
- Compliance with notice statutes
- Open Public Meetings Act compliance

How to Insure Vacated Streets

Step 1 – Determine What Interest the Government Owns:

Step 2 - Confirm the Street Was Legally Vacated; don't assume.
What is the proper evidence? A duly adopted vacation ordinance.

Step 3 - Verify the Validity of the Vacation: Obtain proof that:

1. The ordinance was adopted under the applicable vacation statute (e.g., N.J.S.A. 40:67-1 or 40:67-19);
2. Statutory notice requirements were satisfied;
3. The ordinance complied with the Open Public Meetings Act;
4. A certified copy of the ordinance was recorded.

How to Insure Vacated Streets

Step 4 – Determine Ownership After the Vacation; Once the public rights have been extinguished, determine who owns the underlying fee.

Step 5 – Confirm There Are No Remaining Title Issues:

Before insuring, verify:

1. Legal access still exists;
2. No parcel has become landlocked;
3. Private easement rights have been addressed;
4. legal descriptions accurately include the former roadbed;
5. No governmental fee interest remains outstanding.

Survey Review is Critical

Survey may reveal many concerns:

- Locates the former roadbeds
- Identifies unopened streets
- Identifies Gaps/gores resulting from the vacation
- Identifies Encroachments
- Determines Utility occupation
- Reveals Access issues
- Reconciles the survey with the record title.
- Reveals surviving easements or other rights.

Vacation of Parks, Playgrounds & Other Public Lands

- **Different Rules Than Streets:** Vacating parks, playgrounds, beaches, and other public lands generally requires more than a vacation ordinance.
- **Voter Approval May Be Required:** Unless the municipality owns the land in fee simple, a public referendum is generally required before public rights can be extinguished.
- **Additional Compliance Required:** Including applicable vacation statutes, Local Lands and Building Laws, Open Public Meetings Act, and Green Acres restrictions may apply or other deed restrictions.

Wrap Up and Review

Questions to ask before insuring property involving a roadway:

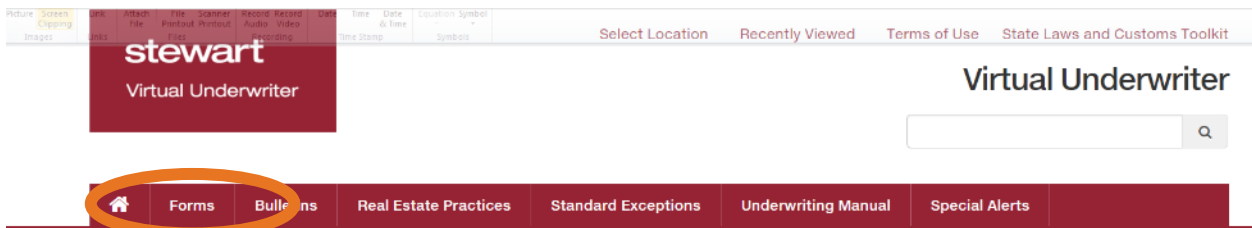
1. Who owns the underlying fee?
2. Was there a valid dedication and acceptance?
3. Was the roadway properly vacated?
4. Do any public or private rights survive?
5. Does the survey agree with the record title?



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