

Railroad Rights-of-Way Ownerships

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Commercial Underwriter



Is it Fee or an Easement and who has rights to be considered

This will be an overview of Railroad (RR) right of way (ROW) ownerships and the often complex subject of who has rights including the heirs of the parties that granted the interest for the RR ROW to the rights of the abutting landowners. We will also discuss getting access over an existing RR ROW by means of a license.

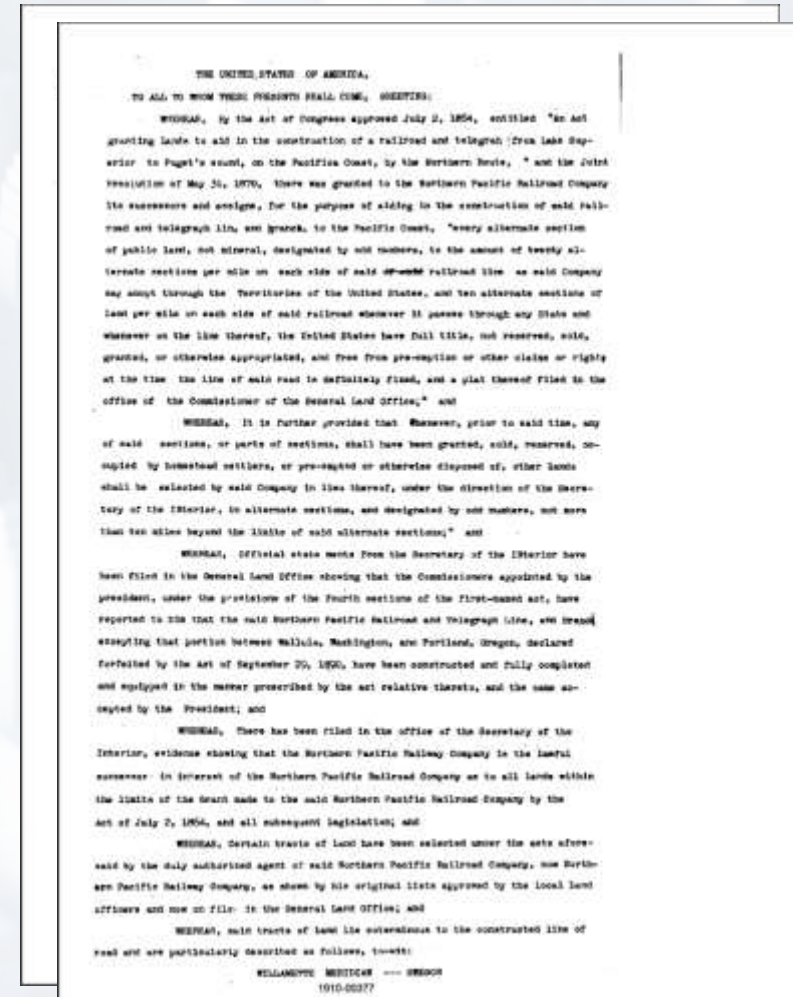
The topic of RR ownership and rights is an extremely broad topic and one which one hour does not present enough time to completely cover the complex nature of the topic.

That said here is some basic information to get it us started.

Ways in which a Railroad company may acquire an interest in Real Property

1. Federal Grant

- A. Pacific Railway Acts of 1862-1871
- B. Pacific Railway Acts of 1872
- C. Right of Way Act of March 3, 1875



1. Federal Grant and Abandoned Right-of-Way:

- The General Railroad Right-of-Way Act of 1875 allowed railroad companies to acquire “right[s] of way through the public lands of the United States.”
- If a railroad company abandoned a right-of-way, the ownership of that abandoned right-of-way would revert to the owner of the surrounding tract of land, not to the United States.
- In other words, fee simple ownership (full ownership) of an abandoned railroad right-of-way vested in the landowner adjacent to the right-of-way, not in the government.
- This was confirmed by the United States Supreme Court in the case of United States v. Brandt.

Determining Ownership:

- Determining actual ownership of a railroad right-of-way can be complicated and will require a search of the public records.
- Some portions of the corridor may be owned outright by the railroad (acquired in “fee simple”), while other portions may only grant the right to use (held in “easement”).

2. Eminent Domain

- RR companies, as private entities, have the ability to acquire property through eminent domain due to their status as operating utilities.
- However, it's essential to check local state laws and specific powers related to eminent domain.



3. Deed from a Private Party

- When dealing with a deed from a private party, the first step is to determine whether the interest is a fee (full ownership) or an easement (limited use).
- If it's an easement, the title examiner/officer must search the next deed in the chain of title to ascertain whether the portion excepted from the legal description is solely an easement.
- If this can be determined, title can be vested in the abutting landowner or the successor in interest to the original grantor.
- If certainty is lacking, the title company may vest ownership in the abutting property owner and the heirs or devisees of the original grantor to the RR.
- A Railroad company may acquire absolute fee title depending on the language on the deed and the state statutes where the property is located.

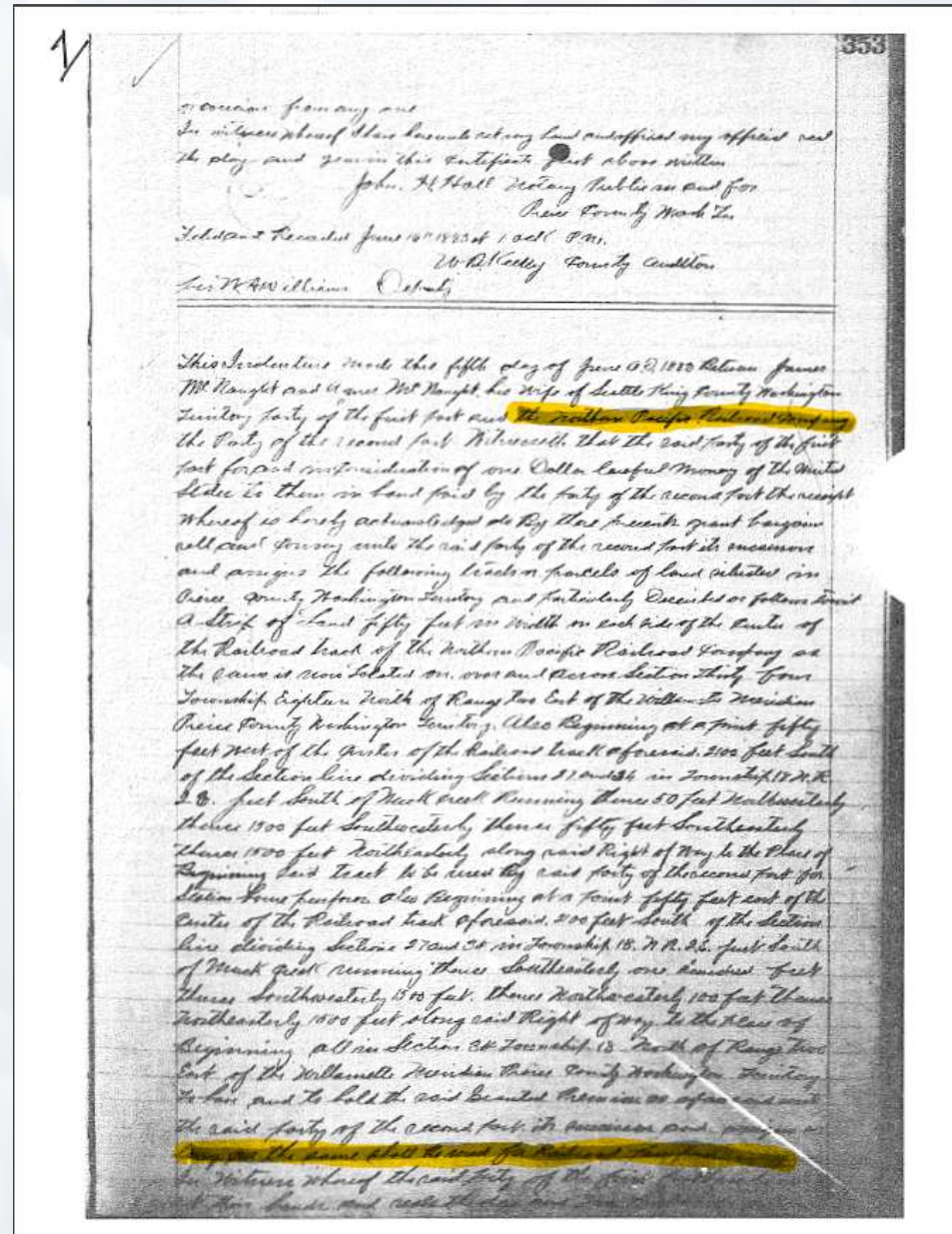
4. Easement

- If the interest is determined to be an easement, further research is needed to identify the underlying fee owner.
- Often, conveyances to the RR for railroad purposes include language such as “Grantor grants to the RR a right of way for RR purposes.”
- Courts consistently interpret any reference to “right of way” as indicating an easement.
- Revisionary language in the deed also points toward an easement.

Deed to NPRR

The Northern Pacific Railroad Company

So long as the same shall be used
for Railroad purposes



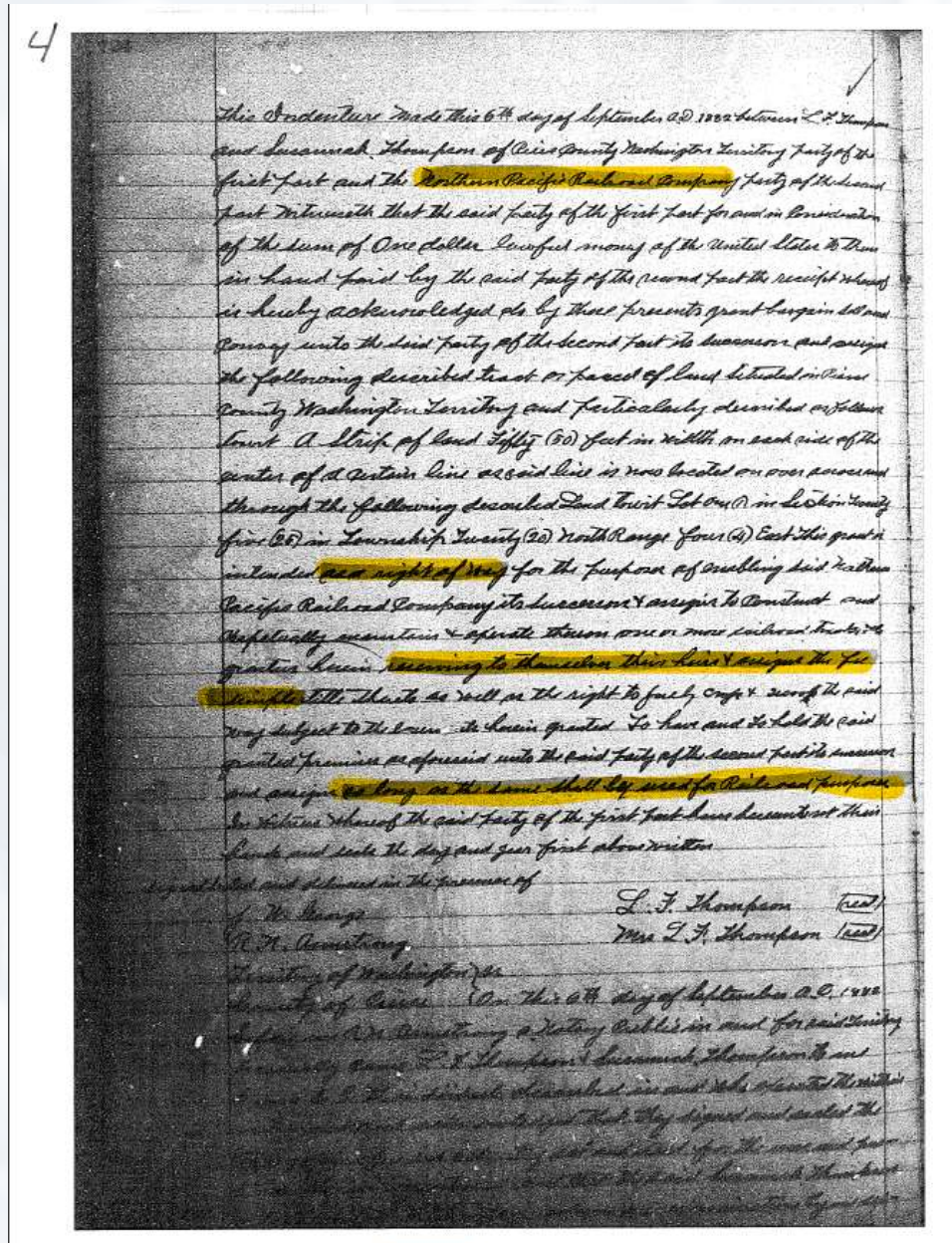
Deed to NPRR

The Northern Pacific Railroad Company

As a Right of Way

Reserving to themselves their heirs and assigns the fee

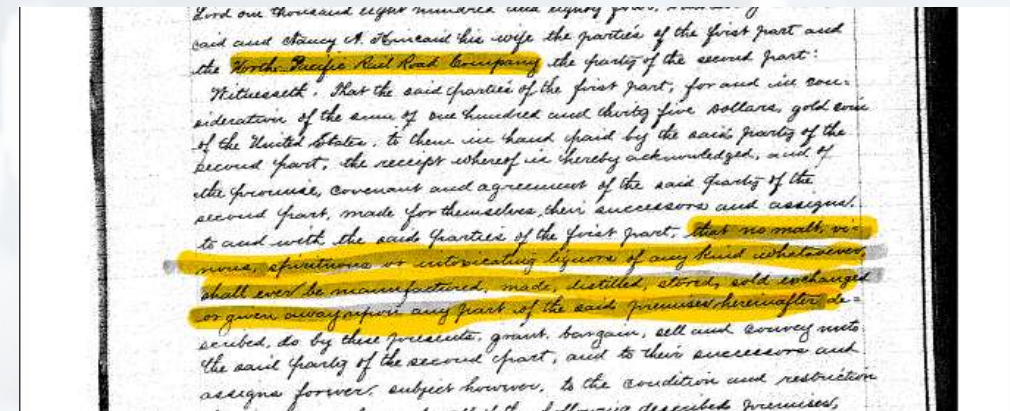
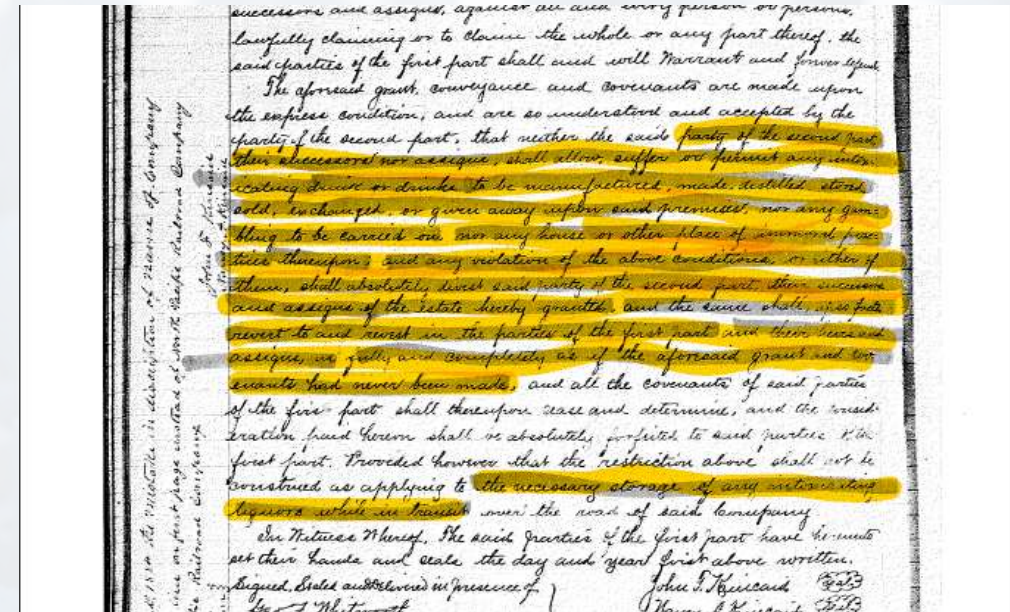
As long as the same shall be used for Railroad purposes.



Deed to NPRR

Shall allow suffer or furnish any intoxicating drink or drinks to be manufactured, made, distilled, stored, sold, exchanged, or given away upon said premises nor any gambling to be carried on nor any house or other place of immoral practices thereon.

Though the restriction shall not apply to intoxicating liquors in transit.



Mortgages against properties owned by the Railroad

Another interest to consider in the State of Washington are Mortgages against NPRR.

- These are very often missed and not set up. From my experience BNSF successor to NPRR is aware of these and are aware of what is owed to the beneficiary, or their successor and they will obtain partial releases to the Mortgages to the property that is the subject of the sale. I have seen recorded partial releases to the Mortgages when dealing with BNSF ownership albeit this was a number of years back and I do not know if there are still balances on the Mortgages.
- These Mortgages affect properties in Pierce County WA.

NPRR Mortgages

SCHEDULE B - SECTION 2
CONTINUED

SPECIAL EXCEPTIONS

- LIEN OF THE REAL ESTATE EXCISE SALES TAX AND SURCHARGE UPON ANY SALE OF SAID PREMISES, IF UNPAID. AS OF THE DATE HEREIN, THE EXCISE TAX RATE FOR CITY OF RENTON IS 1.78%.
- GENERAL TAXES. THE FIRST HALF BECOMES DELINQUENT AFTER APRIL 30TH, THE SECOND HALF BECOMES DELINQUENT AFTER OCTOBER 31ST.
YEAR: **2006**
AMOUNT BILLED: \$6,723.53
AMOUNT PAID: \$3,361.77
AMOUNT DUE: \$3,361.76, PLUS INTEREST AND PENALTY, IF DELINQUENT
LEVY CODE: 2100
TAX ACCOUNT NO.: 182305-9262-02
ASSESSED VALUATION:
LAND: \$500,900.00
IMPROVEMENTS: \$ 1,000.00

NOTE: KING COUNTY TREASURER, 500 4TH AVENUE, 8TH FLOOR ADMIN. BLDG., SEATTLE, WA 98104 (206) 296-7300
WEB ADDRESS: <http://webapp.metrokc.gov/KCTaxinfo/>
- MATTERS OF EXTENDED OWNER/PURCHASER COVERAGE WHICH ARE DEPENDENT UPON AN INSPECTION AND AN ALTA SURVEY OF THE PROPERTY FOR DETERMINATION OF INSURABILITY.

PLEASE SUBMIT A COPY OF THE ALTA SURVEY AT YOUR EARLIEST CONVENIENCE FOR REVIEW. OUR INSPECTION WILL BE HELD PENDING OUR REVIEW OF THE ALTA SURVEY AND THE RESULTS OF SAID INSPECTION WILL BE FURNISHED BY SUPPLEMENTAL REPORT.
- GENERAL LIEN MORTGAGE TO SECURE THE INDEBTEDNESS OF THE AMOUNT HEREIN STATED AND ALL OTHER MORTGAGES OR AMOUNTS SUPPLEMENTAL THERETO, AND THE TERMS AND CONDITIONS THEREOF.
MORTGAGOR: NORTHERN PACIFIC RAILWAY COMPANY, A WISCONSIN CORPORATION
MORTGAGEE: THE FARMERS LOAN AND TRUST COMPANY, A CORPORATION
AMOUNT: \$190,000,000.00
DATED: NOVEMBER 10, 1896
RECORDED: DECEMBER 28, 1896
RECORDING NO.: **153717**
(INCLUDES OTHER PROPERTY)

THE FARMERS LOAN AND TRUST COMPANY IS NOW CITIBANK N.A.

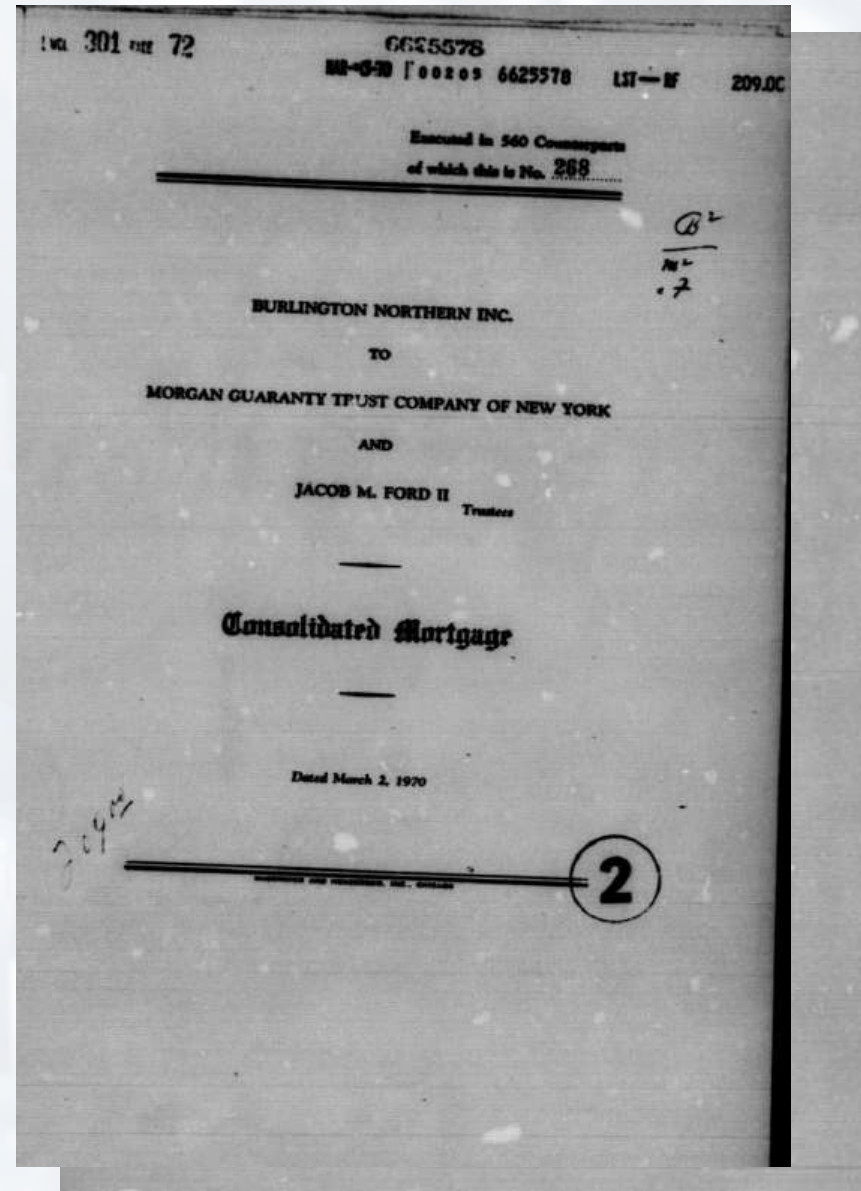
Page 4 Order Number: 205137724

- CONSOLIDATED MORTGAGE TO SECURE THE INDEBTEDNESS OF THE AMOUNT HEREIN STATED AND ALL OTHER MORTGAGES OR AMOUNTS SUPPLEMENTAL THERETO, AND THE TERMS AND CONDITIONS THEREOF.
MORTGAGOR: BURLINGTON NORTHERN, INC., A DELAWARE CORPORATION
MORTGAGEE: MORGAN GUARANTY TRUST OF NEW YORK, A NEW YORK CORPORATION
AMOUNT: BONDS IN THE AGGREGATE PRINCIPAL SUM OF \$58,500,000.00, PLUS INTEREST
DATED: MARCH 2, 1970
RECORDED: MARCH 3, 1970
RECORDING NO.: **6625578**
(INCLUDES OTHER PROPERTY)

SAID MORTGAGEE IS NOW U.S. BANK TRUST NATIONAL ASSOCIATION.
- LEASE AND THE TERMS AND CONDITIONS THEREOF.
LESSOR: BURLINGTON NORTHERN INC., A DELAWARE CORPORATION
LESSEE: MUNICIPALITY OF METROPOLITAN SEATTLE, A MUNICIPAL CORPORATION
TERM: UNDISCLOSED
DATED: AUGUST 12, 1975
RECORDED: OCTOBER 17, 1975
RECORDING NO.: 7510170621
- UNRECORDED LEASEHOLDS, IF ANY, RIGHTS OF VENDORS AND SECURITY AGREEMENT ON PERSONAL PROPERTY AND RIGHTS OF TENANTS, AND SECURED PARTIES TO REMOVE TRADE FIXTURES AT THE EXPIRATION OF THE TERM.
- A CERTIFICATE OF GOOD STANDING FROM THE STATE OF DELAWARE FOR BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION, SHOULD BE SUBMITTED PRIOR TO CLOSING, TOGETHER WITH EVIDENCE OF THE AUTHORITY OF THE OFFICERS THEREOF TO EXECUTE THE FORTHCOMING INSTRUMENT.
- QUESTIONS AS TO THE DISPOSITION OF THE INTERESTS OF MARY F. FULLER, FORMERLY MARY F. TOBIN, AND HER HUSBAND O. H. FULLER AS DISCLOSED ON DEED UNDER RECORDING NO. 71047. WE FIND NO PROBATES OF RECORD FOR SAID PARTIES AND THEREFOR CANNOT IDENTIFY THE PAST OR CURRENT HEIRS TO SAID INTEREST.
- ACCORDING TO THE APPLICATION FOR TITLE INSURANCE, TITLE IS TO VEST IN PERSONS NOT YET REVEALED AND WHEN SO VESTED WILL THEN BE SUBJECT TO MATTERS DISCLOSED BY A SEARCH OF THE RECORDS AGAINST THEIR NAMES.

Page 5 Order Number: 205137724

Mortgages NPRR



Unique Example: Burlington Northern Railroad's Property Interest

In this unique example, we explore how Burlington Northern Railroad's property interest differs from typical scenarios. The case involves determining ownership of Hood Street in Tacoma, where part of the street is open and in use, while another part is used by adjacent landowners for parking.

Hood Street



1. Initial Uncertainty

- The city believed they owned Hood Street, but their records lacked confirmation.
- Despite thorough searches, no deed, ordinance, or dedication for Hood Street was found.
- Hood Street originated from various 1800s plats, none of which contained dedication language.

2. Title Determination

- In the absence of specific documentation, title would vest in the underlying fee title holder of the plats.
- The owner of these plats was the Tacoma Land Company.



3. Collaboration and Research

- Collaborating with the city, we aimed to establish their title to the street.
- Notably, the city had maintained the open portion of Hood Street for decades.



4. Tacoma Land Company and Bankruptcy

- To verify ownership, we delved into archival records, including late 1800s newspapers.
- Old photos revealed Hood Street's historical use for passenger drop-offs near the train station.
- An article indicated that the Tacoma Land Company had gone bankrupt.
- Interestingly, the Northern Pacific Railroad company held a 51% stake in the Tacoma Land Company as evidenced in the same article.

Burlington Northern Railroad's Property Interest

Therefore, it was agreed with by the city that we would vest Title in Burlington Northern Santa Fe Railway company as successor in interest to the Tacoma Land Company.



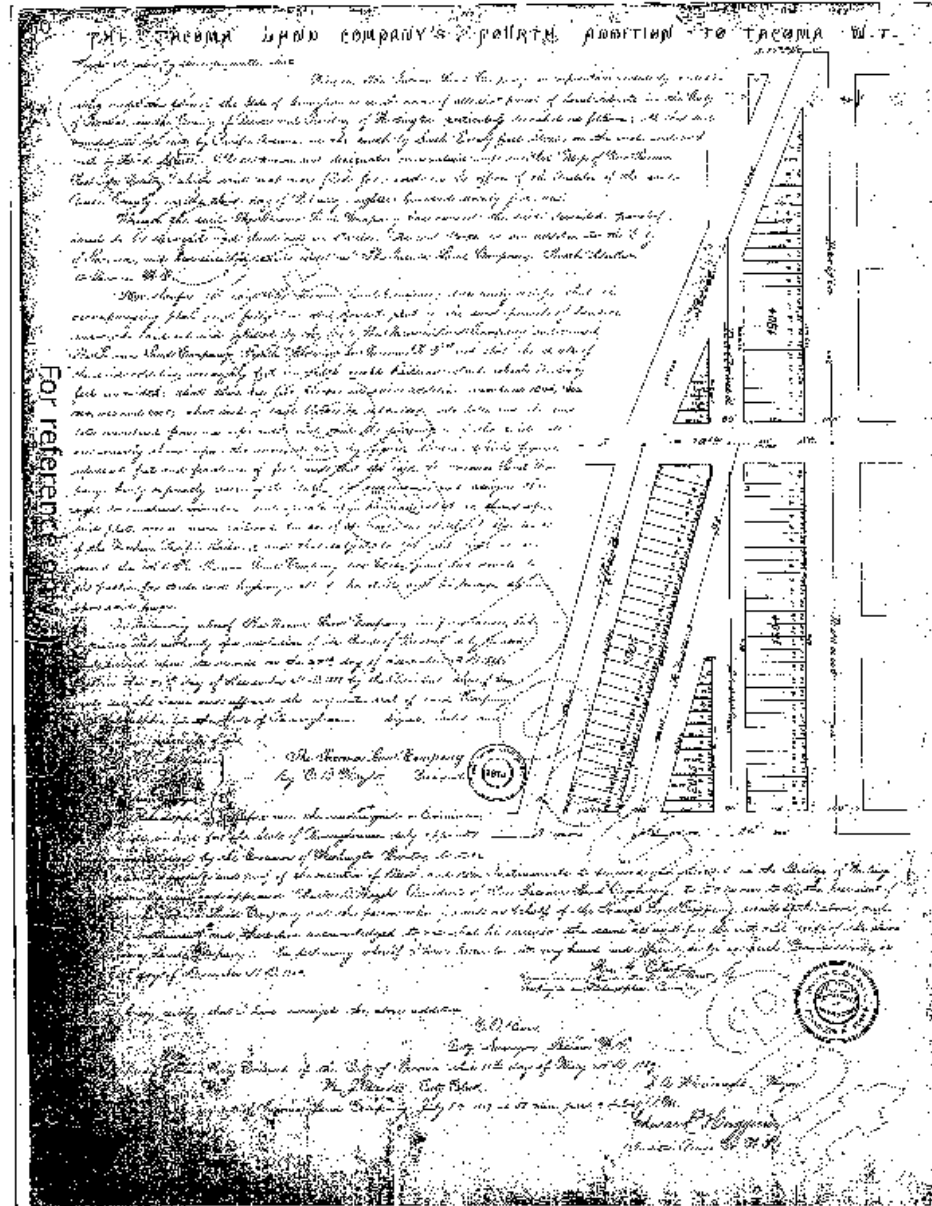
Hood Street



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2024 Title Tenets Webinar Series

Tacoma Land Company 4th



License

200909250333.001



AFTER RECORDING RETURN DOCUMENT TO:

Sound Transit
401 South Jackson Street
Seattle, WA 98104
Attention: Property Manager

MEMORANDUM OF ROAD ACCESS LICENSE

Document Title: Memorandum of Road Access License
Licensor: Central Puget Sound Regional Transit Authority
Licensee: F. S. Harmon Manufacturing Company
Tax Parcel Number: 0320074008

This MEMORANDUM OF ROAD ACCESS LICENSE refers to that certain Road Access License ("License") dated August 6, 2009 between CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY, hereinafter called "Sound Transit", and F. S. HARMON MANUFACTURING COMPANY, hereinafter called "Licensee".

LICENSEE PROPERTY AND LICENSE AREA

Licensee owns property legally described below. Licensee's operations use a portion of property owned by Sound Transit. Sound Transit has licensed to Licensee a portion of Sound Transit property to allow Licensee continued non-exclusive use and maintenance of a private road parallel to Licensee's Property (the "Access Road") upon the terms and conditions of the License. The License Area is described as follows:

A portion of Sound Transit property consisting of a private road formerly known as Hood Street located within Sound Transit's property parallel to Licensee's Property between South Pine Street and South Steele Street in Tacoma, Washington.

Legal Description of Licensee's Property:

SECTION 07 TOWNSHIP 20 RANGE 03 QUARTER 42:

BEG 120 FT S OF INTER S LI OF CENT ST EXT W & E LI W ¼ OF SE TH W 618.9 FT TH S 408.2 FT TO N LI N P R R/W TH NELY ALG R/W TO PT S OF BEG TH N 214.25 FT TO BEG ALSO BEG E LI W ¼ SE WITH INTERSECTION OF NLY LI N P R R/W TH N 157.1 FT TO SLY LI PRESCOTTS 2ND ADD PRODUCED WLY TH N 72 DEG 36 MIN E TO SW COR OF BLK 10 PRESCOTTS 2ND ADD TH S ON EXT OF W LI OF SD BLK 10 TO SWLY LI OF SPUR TRACK EASE TH SELY ALG SD SWLY I TO INTER N LI N P R R/W TH SWLY ALG SD N LI TO BEG SUBJ TO SPUR TRACK EASE

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

Rails to Trails: A Personal Involvement

In this brief overview, we'll discuss Rails to Trails, focusing on my personal experience. Several years ago, I worked on a project in Olympia, Thurston County, WA. Here are the key points:



1. Project Context

- The city of Olympia aimed to acquire fee title to the abandoned NPRR (Northern Pacific Railroad) right-of-way (ROW).
- Their goal was to develop a trail for the benefit of Thurston County citizens as part of the Rails to Trails initiative.

2. Title Reports and Language

- We conducted approximately 35-40 title reports.
- All deeds related to the NPRR contained right-of-way language and revisionary clauses.

3. City's Objective

- The city wanted to consolidate all properties into one Title policy and vest title in the City of Olympia.
- Achieving this required a Quiet Title Action, regardless of the conveyances mentioned in the vesting documents. The reason for this was because of the complex nature of abandoned RRROW's. An important point is title companies often spend more on defense than they do for actual claims.

4. Legal Context

- It's important to note that the vesting (see next slide) occurred before the United States v. Brandt case which was decided in 2014.
- In that case, the Supreme Court ruled that fee simple ownership of an abandoned railroad ROW vested in the adjacent tract, not in the USA.

Vesting Title Commitment

3. The estate or interest in the Land at the Commitment Date is: Fee Simple

4. The Title is, at the Commitment Date, vested in:

John Davidson and Betty Davidson, husband and wife as abutting landowners to the property herein described,

The heirs and or devisees of Sam Maris and Trudy Maris, husband and wife deceased as original grantors to the Northern Pacific Railway Company,

The United States of America and the City of Olympia all as their interests appear of record.

5. The Land is described as follows: FOR LEGAL DESCRIPTION SEE EXHIBIT "A" ATTACHED HERETO

Access to Public or Private Streets

Now we will discuss access to public or private streets when a subject property lacks direct access without crossing a railroad right-of-way (RRROW). Here are the key points:

1. Access Options:

- When dealing with RRROW access, consider options such as revocable licenses, crossing permits, and easements.
- Easements are preferred for Title Insurance purposes due to their permanence.

2. License Considerations:

- Licenses for RRROW access are often unrecorded and nontransferable without consent from the railroad company.
- Title commitments and policies should include a Schedule B exception for the license. (See next slide)

3. Exception for Lack of Record Access:

- If there's no recorded or off-record evidence of RRROW access for the subject property, the title company may set an exception.
- An example exception could be: "Lack of record means of access for ingress and egress to a public road."

4. ALTA -17 and ALTA 17.1 Access Endorsement: (See second and third slide)

- What to consider if a lender requests an ALTA -17 or 17.1 Access endorsement, when access is by means of license to a public road:
 - If access to a public road exists via a license (recorded or unrecorded), then access is not direct and therefore we cannot issue.
 - To issue an ALTA 17.1 access there must be in Schedule A and estate being insured for which insures the easements.

Schedule B exception

Terms and conditions of that certain License for access to Lincoln Ave as granted to ABC LLC, a Washington limited liability and as recorded April 24, 2022 under recording No. 20220424123 and as further assigned to New Buyer LLC, a Washington limited liability, by instrument recorded May 14, 2024 under recording No. 20240514234.

Or if the license and Assignment is unrecorded it can still appear as a schedule B exception to Title.

Terms and conditions of that certain unrecorded License for access to Lincoln Ave as granted to ABC LLC, a Washington limited liability and as further assigned to New Buyer LLC, a Washington limited liability as evidenced by documents in the company's possession.

ALTA 17

ALTA Endorsement 17-06 (Access and Entry)

ENDORSEMENT

Attached to Policy No.

Issued by

STEWART TITLE GUARANTY COMPANY

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

STEWART TITLE GUARANTY COMPANY

By: _____
Authorized Signatory

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ALTA 17.1

Indirect Access and Entry ALTA 17.1

ENDORSEMENT
Attached to Policy No. _____
Issued by
STEWART TITLE GUARANTY COMPANY

The Company insures against loss or damage sustained by the insured if, at Date of Policy: (i) the easement identified [as Parcel _____] in Schedule [A][C] (the "Easement") does not provide that portion of the land identified [as Parcel _____] in Schedule [A][C] both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Easement.

STEWART TITLE GUARANTY COMPANY
By: _____
Authorized Signatory

Challenges With Property Sale

1. The ALTA 17 Access Endorsement Request:

- The lender requested an ALTA 17 access endorsement, which highlighted the lack of legal access.
- Unfortunately, we couldn't issue the ALTA 17 because direct access to a public street was absent.

2. Connecting with BNSF:

- We reached out to a BNSF representative.
- Verbal and email communication clarified that since the property's use wasn't changing, an approval for the assignment of the existing license could be recommended.
- However, formal assignment by closing was impossible due to time constraints.

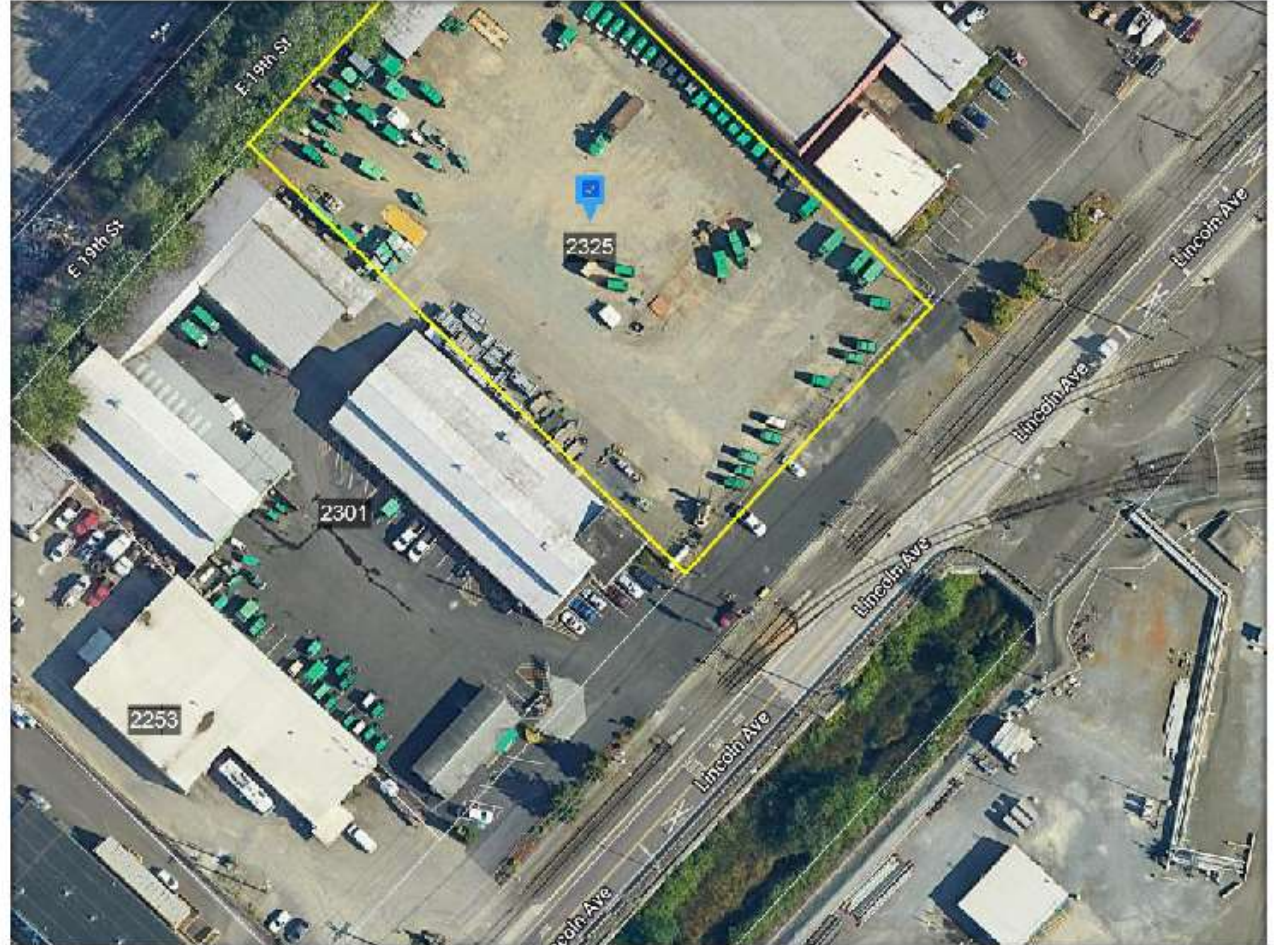
3. Creative Solution:

- Problem 1 (formal assignment) was resolved by offering the buyer and lender the option to close while holding the policy for the license assignment.
- Problem 2 (access endorsement) required an alternative approach.

4. ALTA 17.1 Indirect Access:

- Since direct access was lacking, we couldn't issue an ALTA 17.
- Instead, we needed an insured estate in Schedule A to qualify for the ALTA 17.1, which acknowledges indirect access.

Lincoln Ave.



Estate Being Insured

Paragraph 3 of Schedule A:

3. The estate or interest in the Land at the Commitment Date is:

- (A) Fee or Fee Simple
- (B) Easement
- (C) Leasehold
- (D) Equitable (RE Contract)

In order to issue the ALTA 17.1 we need an easement in the insured estate example:

3. The estate or interest in the Land at the Commitment Date is:

Fee as to Parcel A and an Easement as to Parcel B

Estate Being Insured

3. The estate or interest in the Land at the Commitment Date is:

Fee as to Parcel A and a License as to Parcel B.

EXHIBIT "A" Legal Description:

Parcel A:

Lots 1, 2, 3 and 4, Block 5, Newport addition, according to the plat thereof recorded in Volume 19 of Plats, Page 47, records of Pierce County, Washington. Situate in the City of Tacoma, County of Pierce, State of Washington.

Parcel B:

License for access to Lincoln Ave as granted to ABC LLC, a Washington limited liability and as recorded April 24, 2022 under recording No. 20220424123 and as further assigned to New Buyer LLC, a Washington limited liability, by instrument recorded _____, 2024 under recording No. 2024_____.

Schedule B exception:

Terms and conditions of that certain License for access to Lincoln Ave as granted to ABC LLC, a Washington limited liability and as recorded April 24, 2022 under recording No. 20220424123 and as further assigned to New Buyer LLC, a Washington limited liability, by instrument recorded _____, 2024 under recording No. 2024_____.

ALTA 17.1

Indirect Access and Entry ALTA 17.1

ENDORSEMENT
Attached to Policy No. _____
Issued by
_____ TITLE COMPANY

The Company insures against loss or damage sustained by the insured if, at Date of Policy: (i) the License identified as Parcel B in Schedule A (the "License") does not provide that portion of the land identified as Parcel A in Schedule A both actual vehicular and pedestrian access to and from Lincoln Avenue (the "Street"),(ii) the Street is not physically open and publicly maintained, or (iii) the insured has no right to use existing curb cuts or entries along that portion of the Street abutting the License.

By: _____
Authorized Signatory

Conclusion

Railroad rights and ownerships can be a confusing and the laws can differ from state to state. It is very important to seek a title representative in your area that is familiar with the unique laws in your region.

We here at Stewart Title Guaranty Company Commercial Services pride ourselves in our knowledgeable staff and the resources that are available.

I encourage you all to reach out to your local Stewart Title personal to help you navigate through any difficult title issues that may arise.

In those regards here is a link to Stewart Title Virtual Underwriter.

<https://www.virtualunderwriter.com/en.html>

Thank you. Questions?

2024 Title Tenets Webinar Series

Stewart Title Guaranty Company

National Commercial Services

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