



CHICAGO TITLE INSURANCE COMPANY

TOPIC: <u>Railroads – The Roar of the Railroad</u>

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The North Carolina Railroad Company (NCRR) has been very busy in Greensboro, N.C. The company owns the railroad tracks in this area which are part of the 317 mile system of tracks stretching from Morehead City to Charlotte, N.C., leased to Norfolk Southern Railway. The NCRR is claiming ownership of a 100-foot right of way on both sides of these rail lines. The company's position is that an 1849 charter of the company specified a 200-foot right of way; 100 feet on each side of the tracks, and gives the railroad ownership of the right of way. A current (December 2005) map of all railroad systems in North Carolina is attached as well as a portion of the 1849 charter of the North Carolina Railroad Company.

NCRR officials have been going door to door recently telling those people with land in the right of way (these people thought they owned the land) that they would need to pay to lease the right-of-way land, buy liability insurance, and be ready to vacate within 60 days. Railroad demands due to the increased number of passenger trains and freight trains plus a long range federal government proposal for a high speed rail line from the northeast to the southeast make the railroad lines more valuable each day.

Activity from Raleigh to Greensboro may be four to six freight trains a day and from Greensboro to Charlotte about 50 freight trains. With future plans previously discussed, this could increase.

Recent statements by NCRR officials appearing in Greensboro area newspapers state that non-railroad structures can remain for now, but the railroad expects to be paid for use of the land and those using it need insurance. In most of the sixteen counties from the coast to Charlotte there are no disputes. The railroad company says it is trying to be reasonable and only wants a written agreement with the people using the right-of-way for now. That way, everyone knows their rights.

Owners challenge whether the railroad's corridor amounts to 200 feet. Some property owners have been paying taxes on property located in the railroad right of way. The property owners' deeds only show a right of way of 50 or 35 feet. There have indeed been instances where the railroad (Norfolk & Southern) and property owners have paid taxes on the same property. Sometimes just the railroad pays, sometimes just the property owner, and other times neither pays.

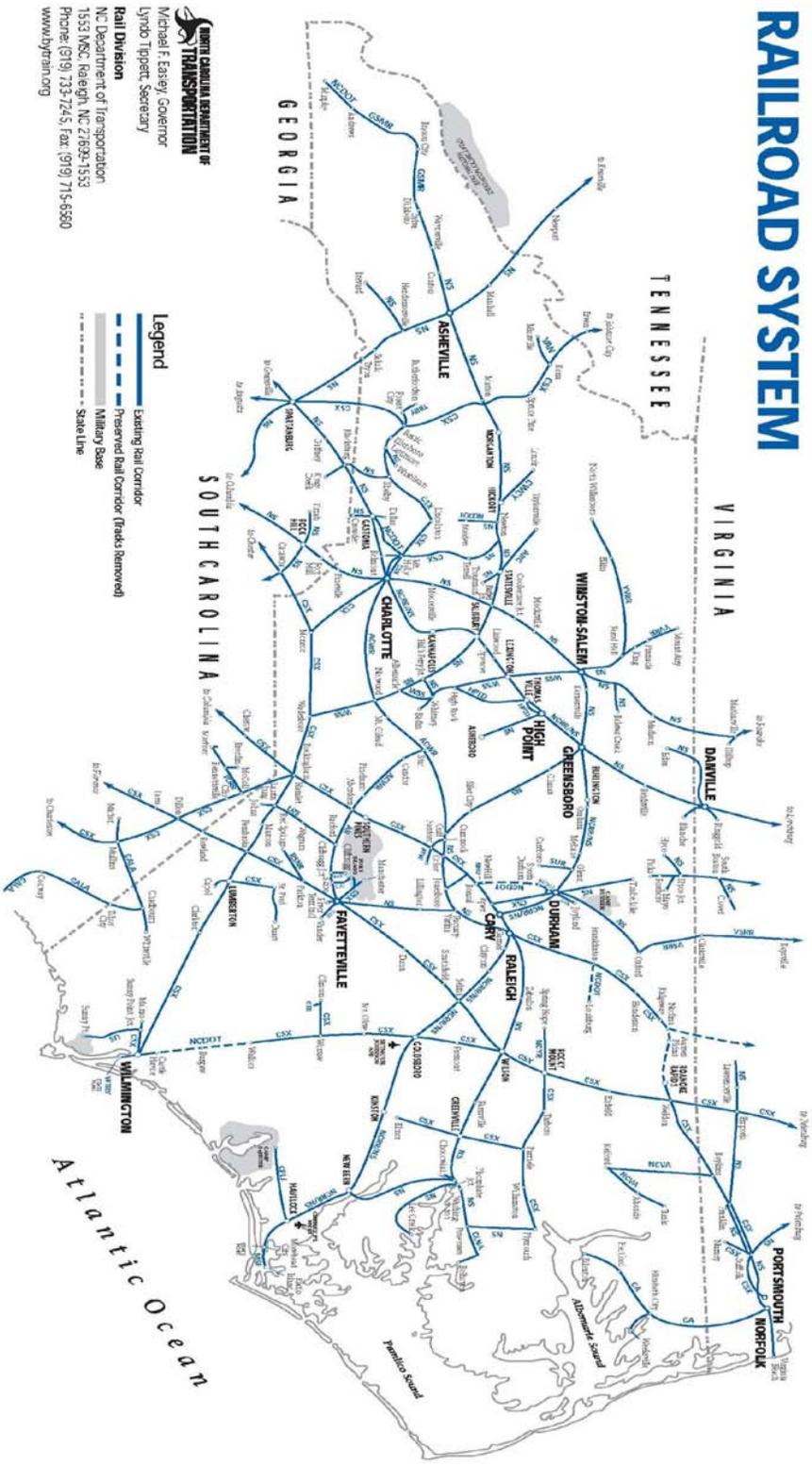
North Carolina law allows railroads to acquire land by both charter grant and express grant. The charters usually contain a grant of eminent domain and set forth condemnation procedures. The

NCRR charter does include the grant of eminent domain (Section 27) and sets forth that the amount of land condemned shall extend to “100 feet on each side of the main track of the road” (Section 28). If condemnation was used to acquire property, then the NCRR will own an interest “100 feet on each side of the main track of the road.” Questions exist as to what happens if the main road is later moved. North Carolina case law has generally held that title acquired under a charter grant is only an easement. (See Carolina and Northwestern Railway Company v. Piedmont Wagon and Manufacturing Company, 229 N.C. 695, 51 S.E.2d 301 (1949)). However, it is believed that NCRR is claiming a fee interest in their property. Section 25 of the charter does allow NCRR to “purchase, have and hold, in fee, or for term of years, any land, tenements or hereditaments, which may be necessary for said Road”. The charter does limit the railroad’s interest by vesting the title in the company “so long as the same shall be used for the purposes of said railroad” (Section 27 and Section 29).

If the railroad acquired property by an express grant, then the terms of that document should control. A number of cases have interpreted such express grants and developed some specific rules of construction. For example, in McCotter v. Barnes, 247 N.C. 480, 101 S.E. 2d 330 (1958), the court held that where a deed included “right of way” in describing the conveyance, a fee was actually conveyed when considering all the of deed’s terms. The court reasoned that the term “right of way” described an intended use, rather than designating a conveyance of an easement.

For the present, this situation involves only the North Carolina Railroad Company, the owner of the tracks, and Norfolk Southern Railway that leases the tracks. The title attorney needs to be very careful in any railroad right of way situation. Consideration should be given to such things as the stated right-of-way width, how far the subject property lies from the centerline of the railroad (i.e., less than 100 feet?), and the railroad company owning the right of way. Chicago Title will take an exception to *title of the land, if any, lying within the railroad right of way extending up to one hundred feet on each side of the tracks or two hundred feet in total width, whichever is greater*. We will, of course, be attuned to evidence provided which could alter this exception; i.e., a different railroad company.

North Carolina RAILROAD SYSTEM



NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
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 Lynda Tippett, Secretary
Rail Division
 NC Department of Transportation
 1533 NSC, Raleigh, NC 27689-1533
 Phone: (919) 733-7245, Fax: (919) 715-6590
 www.bytrain.org

Legend
 Existing Rail Corridor
 Preserved Rail Corridor (Tracks Removed)
 Military Base
 State Line

AMTRAK Stations in North Carolina

Burlington	Fayetteville	High Point	Salisbury
Cary	Gastonia	Kannapolis	Seema
Charlotte	Greensboro	Raleigh	Southern Pines
Durham	Harrisville	Rocky Mount	Wilson

INTERCITY RAILROAD NAME

ACNR	Academian Carolina & Western Railway
ARC	Asheville & Rockfish Railroad
ARV	Asheville & Western Railway, LP
AWV	Atlantic & Western Railway, LP
CA	Chapel Hill & Albemarle Railroad
CSA	Carolina Southern Railroad
CFR	Cape Fear Railways
CMA	Carolina Coastal Railway
CPV	Camp Lejeune Railroad
CSX	CSX Transportation

INTRASTATE RAILROAD NAME

CTR	Clinton Terminal Railroad
CMVY	Caldwell County Railroad
HPTD	High Point, Thornhill & Denton Railroad
LDS	Laurinburg & Southern Railway, Inc.
MSF	Morehead and Southern Railroad Company
NCDOT	N.C. Department of Transportation
NCRB	North Carolina Railroad Company
NCA	North Carolina & Virginia Railroad
NHV	New Hope Valley Railroad
NS	Norfolk Southern Corporation

SEAPORT RAILROAD NAME

PDOR	Pee Dee River Railway
PSNR	Red Springs & Northern Railroad
SIR	State University Railroad
TBRV	Thermal Belt Railway
US	US Military
VSR	Virginia Southern Railroad
WSS	Winston-Salem Suburban Railway
WTRV	Wilmington Terminal Railroad, Inc.
YVAR	Yadkin Valley Railroad

December 2005

North Carolina Railroad System map available online at
<http://www.bytrain.org/quicklinks/PDF/2005RailMap.pdf>



**EXCERPT FROM CHARTER OF
NORTH CAROLINA RAILROAD COMPANY**

Land con- demned. number of feet.	<p>Sec. 28. That the right of said company to condemn lands in the manner described in the 27th section of this act, shall extend to the condemning one hundred feet on each side of the main track of the road, measuring from the centre of the same, unless in case of deep cuts and fillings, when said company shall have power to condemn as much in addition thereto, as may be necessary for the purpose of constructing said road; and the company shall also have power to condemn any appropriate lands in like manner, for the constructing and building of depots, shops, ware-houses, buildings for servants, agents and persons employed on the road, not exceeding two acres in any one lot or station.</p>
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