

A Summary of Possible Reversionary Rights and Rights of Entry In Michigan

Acquisition of railroad property: Definitions

Fee simple: This is the highest form of title, like what you get when you buy a house. Land acquired in fee simple is owned outright by the railroad, and adjacent land owners have no reversionary interest at all. In fact, the vast majority of railroad property was acquired by the railroad in fee simple.

Easement: This is when a property is given for a particular use, such as “for railroad purposes only.” Since rail corridors soon became the location of choice for other transportation corridors such as roads, utilities and, more recently, cable and fiber optic lines, the issue arose as to whether the railroad that acquired the corridors through easement had the power to allow such co-uses itself, or whether the approval of every adjacent landowner was necessary. Since public policy strongly favored the development of these additional technologies, state law generally developed along the line that easements given for railroad purposes were general transportation easements that encompass these additional uses. This is a key point for rail-trails since the same issue arises when railroad easements are proposed for conversion to trail use. It is important for the adjoining landowners to understand that easements for railroad purposes only have routinely been interrupted to allow additional, compatible uses, including trail use.

Application in Michigan:

The Michigan State Transportation Preservation Act of 1976: The preservation of abandoned railroad rights of way for future rail use and their interim use as public trails is declared to be a public purpose. From Westlaw 474.51.

The Michigan Department of Transportation, as sole agent for the state, is granted first right of refusal to a portion of portions of rail property of a railroad company, including, but, not limited to the tracks, rights of way, land, buildings, appurtenances, other facilities, rolling stock, and equipment, whether or not necessary for the operation of a railroad, for the preservation of a railroad line, or for commuter use trail. From Westlaw 474.56.

In 1990, the Transportation Preservation Act of 1976 was amended to allow the Michigan Department of Natural Resources to have second right of refusal and local governmental entities to have third right of refusal.

1993

The Michigan Trailways Act of 1990 established a mechanism for the Michigan Department of Natural Resources to manage a statewide network of trails, coordinate and plan with the local communities through which a trailway passes, as well as receive funding from the Michigan Department of Natural Resources Budget.

Questions on Reversionary Rights and Rights of Entry

Public Act 13 of 1968 (Michigan Compiled Law 544.61) is an act to limit the duration of possibilities of reverter and rights of entry in conveyance of real property in certain cases, *from Westlaw 26.49 (11)* A right of termination under a terminable interest which was created prior to the effective date of this act is unforseable if the specified contingency does no occur within 30 years after the terminable interest was created or within 1 year after the effective date of this act, which ever is latter. *From Westlaw 26.49 (13)*. All reversionary rights from before 1968 needed to be renewed by 1968 and renewed every 30 years. Any new reversionary rights obtained after 1968 need to be renewed every 30 years.

Definition of railroad right of way: Pursuant to Public Act 13 of 1968, title to railroad right of way held in fee subject to right of reentry for condition broken or possibility of reverter, may ripen into title in fee simple absolute if specified contingency does not occur within 30 years after the creation of terminable interest unless right of termination has been preserved by recording a requisite notice under statute. Op Atty. Gen., March 24 1976, No. 4949.

Recent Court Decisions Involving Public Act 13

1. Leelanau Trails Association & RLTD Railway Corporation v. Noel J. Flohe, et al., 1997.

The court found that the Leelanau Trails Association (LTA) owned the entire corridor in fee simple, despite the fact that the deeds included the clause "to be used for railroad purposes only." The court concluded this language did not grant an easement, but a fee simple subject to the reverter. Under Michigan law, people holding a reverter interest in a property must file a claim to the reverter every 30 years, or it is extinguished. Since none of the landowners had filed such a claim, the reverter (the restriction "for railroad purposes only") was extinguished and LTA owned the land outright and could use it for any purpose it wanted including trails.

2. Bingham Township v. RLTD Railway Corporation & Leelanau Trails Association, 1996.

The court found that the Leelanau Trails Association had railbanked the property correctly and had fee simple title, therefore, Bingham Township could not restrict permits for the construction of a recreational trail.

3. Ludington & Northern Railway v. The Epworth Assembly, 1991.

4. Lawrence F. Odess, et al., v. Grand Trunk Western Railroad Company, 1993 (Opinion by Special Master)

The court found Grand Trunk Western Railroad Company to have fee simple title to property. Therefore, the property did not revert to adjacent landowners.

5. Lawrence F. Odess, et al., v. Grand Trunk Western Railroad Company, 1996 (Court of Appeals).

6. Ronald F. Westman and Pauline M. Westman v. Harold R. Kiell and Betty Ann Kiell, 1990.

7. Cary Enterprises, et al., v. CSX Transportation, Inc. & Rails to Trail Conservancy, 1996

The court found that railroad company purchased the right of way for the operation and maintenance of a railroad corridor. However, according to the State Transportation Preservation Act of 1976 the corridor could continue to be used for interim trail purposes for the preservation of abandoned railroad

rights of way for future rail use. The court concluded that Michigan Law was consistent with the congressional purposed behind the National Trails System Act Amendments of 1983; 16 USC 1247 (d). In addition, the court concluded that for these reasons, the recreational trail purposes contemplated by the Rails-to-Trails Conservancy were consistent with the original transportation purposes of the easements.