

ABANDONMENT OF ROAD RIGHT-OF-WAY

The procedure for abandoning a road right-of-way is established by statute. An individual seeking the "absolute abandonment and discontinuance" of a public road must file a petition with the Board of County Road Commissioners. This petition must include a description of the right-of-way to be abandoned, and the reason for the abandonment. When the highway, or a part thereof to be abandoned, upon or along which there shall be any buildings, there must be at least seven freeholders (a husband and wife count as one) in the township signing the petition and a list of current owners **and** occupants of each parcel abutting that portion to be abandoned, with mailing addresses, shall be certified to under oath by one of the petitioners

If there are buildings on the portion to be abandoned, there will be a public hearing on the petition to determine the public's attitude toward the abandonment. If all of the abutting owners have signed the petition, no public hearing is needed. The Board will adopt a resolution either granting or denying the petition. The county road right-of-way is extinguished when the resolution of abandonment is recorded in the Register of Deed's office. Utility easements for electricity, water, sewer, telephone lines, cable TV, etc. are usually reserved.

Upon abandonment, the disposition of the land in the road will depend upon how the road was acquired.

1. Platted Public Streets in Recorded Subdivisions

The lot owners in the subdivision have a legal interest in the platted roads. If the Road Commission abandons such roads, the use of the road does not automatically revert back to the adjacent property owners. The roads cease to be public, but lot owners in the subdivision may have a legal contractual right to continue the use of the subdivision roads. To terminate the rights of last owners within the subdivision over that portion abandoned, a lawsuit must be brought in Circuit Court to have that portion of the plat vacated. Only the Road Commission can abandon a dedicated public road. Assuming there are no rights retained by the County Road Commission, upon the vacation of the plat or portion thereby in the Circuit Court, that portion of the road abutting a lot up to the centerline thereof, shall belong to the owner of the abutting property.

2. Deeded Roads

These roads are owned by the Road Commission. When a deeded road is abandoned, the land remains in the ownership of the Road Commission.

3. Recorded Right-of-Way Easements

Ownership of the underlying land belongs to the adjoining property owner. When the road easement is abandoned, the property owner is the owner of the land, subject to any utility easements, which may be reserved.

4. Prescriptive Easements

A public road may be created when the public has traveled over private land for an extended period of time, and the Road Commission has spent public funds on maintaining the road right-of-way. The statutory period is seven years. Over the past 150+ years most county roads have been established in this fashion. As with recorded right-of-way easements, when the road right-of-way is abandoned, the control of the right-of-way reverts to the adjoining landowner, subject to any reserved utility easements.