

AN ACT concerning local government.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Counties Code is amended by adding Section 3-5010.5 as follows:

(55 ILCS 5/3-5010.5 new)

Sec. 3-5010.5. Fraud referral and review.

(a) Legislative findings. The General Assembly finds that property fraud, including fraudulent filings intended to cloud or fraudulently transfer title to property by recording false or altered documents and deeds, is a rapidly growing problem throughout the State. In order to combat the increase in the number of these filings, a recorder may establish a process to review and refer documents suspected to be fraudulent.

(b) Definitions. The terms "recording" and "filing" are used interchangeably in this Section.

(c) Establishment and use of a fraud referral and review process. A recorder who establishes a fraud referral and review process under the provisions of this Section may use it to review deeds and instruments and refer any of them to an administrative law judge for review pursuant to subsection (g) of this Section that cause the recorder to reasonably believe that the filing may be fraudulent, unlawfully altered, or

intended to unlawfully cloud or transfer the title of any real property. The recorder may enter into an intergovernmental agreement with local law enforcement officials for the purposes of this referral and review. A recorder may request that the Secretary of the Department of Financial and Professional Regulation assist in reviewing possible fraudulent filings. Upon request, the Secretary, or his or her designee, shall assist in identifying the validity of filings. The recorder shall notify the Secretary when a document suspected to be fraudulent is discovered.

In counties with a population of less than 3 million, a recorder shall provide public notice 90 days before the establishment of the fraud referral and review process. The notice shall include a statement of the recorder's intent to create a fraud referral and review process and shall be published in a newspaper of general circulation in the county and, if feasible, posted on the recorder's website and at the recorder's office or offices.

In determining whether to refer a document to an administrative law judge for review, a recorder may take into consideration any of the following factors:

(1) whether the owner of the property or his or her designated representative has reported to the recorder that another individual is attempting or has attempted to record a fraudulent deed or other instrument upon the property;

(2) whether a law enforcement official has contacted the recorder indicating that he or she has probable cause to suspect title or recording fraud;

(3) whether the filer's name has a copyright attached to it or the property owner's name has nonstandard punctuation attached to it;

(4) whether the documents assert fines that do not exist or have no basis under current law or that require payment in gold or silver;

(5) whether the documents are maritime liens, or liens under the Federal Maritime Lien Act or the Preferred Ship Mortgage Act, or not authorized by the United States Coast Guard;

(6) whether the documents are land patents not authorized and certified by the United States Department of the Interior Bureau of Land Management;

(7) whether the documents are representing that the subject of the lien is releasing itself from a lien held by another entity, with no apparent cooperation or authorization provided by the lienholder;

(8) whether the documents are protesting or disputing a foreclosure proceeding that are not filed within the foreclosure suit and with the court presiding over the matter;

(9) whether the documents are Uniform Commercial Code filings referencing birth certificates or other private

records that are not in compliance with Section 9-501 of the Uniform Commercial Code;

(10) whether the documents are re-recording deeds to re-notarize or attach notary certification if prior notarization already appears unaltered on the document of record;

(11) whether the documents are asserting diplomatic credentials or immunity, non-United States citizenship, or independence from the laws of the United States;

(12) whether the documents are claims that a bank cannot hold title after a foreclosure;

(13) whether the documents are deeds not properly signed by the last legal owner of record or his or her court appointed representative or attorney-in-fact under a power of attorney;

(14) whether the documents are manipulated or altered federal or State legal or court forms that release a lien;

(15) whether a document is not related to a valid existing or potential adverse transaction, existing lien, or judgment of a court of competent jurisdiction;

(16) a document that is not related to a valid existing or potential commercial or financial transaction, existing agricultural or other lien, or judgment of a court of competent jurisdiction;

(17) whether the document is filed with the intent to harass or defraud the person identified in the record or

any other person;

(18) whether the document is filed with the intent to harass or defraud any member of a governmental office, including, but not limited to, the recorder's office, local government offices, the State of Illinois, or the Federal government; and

(19) whether the documents are previous court determinations, including a previous determination by a court of competent jurisdiction that a particular document is fraudulent, invalid, or forged.

(d) Determinations. If a recorder determines, after review by legal staff and counsel, that a deed or instrument that is recorded in the grantor's index or the grantee's index may be fraudulent, unlawfully altered, or intended to unlawfully cloud or transfer the title of any real property, he or she shall refer the deed or instrument to an administrative law judge for review pursuant to subsection (g) of this Section. The recorder shall record a Notice of Referral in the grantor's index or the grantee's index identifying the document, corresponding document number in question, and the date of referral. The recorder shall also notify the parties set forth in subsection (e) of this Section. The recorder may, at his or her discretion, notify law enforcement officials regarding a filing determined to be fraudulent, unlawfully altered, or intended to unlawfully cloud or transfer the title of any real property.

(e) Notice. The recorder shall use county property tax records to identify and provide notice to the last owner of record by telephone, if available, and certified mail both when: (1) a deed or instrument has been referred for review and determination; and (2) a final determination has been made regarding the deed or instrument. Notice, by mail, shall also be sent to the physical address of the property associated with the deed or instrument.

(f) Administrative decision. The recorder's decision to add a Notice of Referral and refer a document for review is a final administrative decision that is subject to review by the circuit court of the county where the real property is located under the Administrative Review Law. The standard of review by the circuit court shall be de novo.

(g) Referral and review process. Prior to referral, the recorder shall notify the last owner of record of the document or documents suspected to be fraudulent. The person, entity, or legal representative thereof shall confirm in writing his or her belief that a document or documents are suspected to be fraudulent and may request that the recorder refer the case for review. Upon request, the recorder shall bring a case to its county department of administrative hearings and, within 10 business days after receipt, an administrative law judge shall schedule a hearing to occur no later than 30 days after receiving the referral. The referral and case shall clearly identify the person, persons, or entity believed to be the last

true owner of record as the petitioner. Notice of the hearing shall be provided by the administrative law judge to the filer, or the party represented by the filer, of the suspected fraudulent document, the legal representative of the recorder of deeds who referred the case, and the last owner of record, as identified in the referral.

If clear and convincing evidence shows the document in question to be fraudulent, the administrative law judge shall rule the document to be fraudulent and forward the judgment to all the parties identified in this subsection. Upon receiving notice of the judgment of fraud, the recorder shall, within 5 business days, record a new document that includes a copy of the judgment in front of the Notice of Referral that shall clearly state that the document in question has been found to be fraudulent and shall not be considered to affect the chain of title of the property in any way.

If the administrative law judge finds the document to be legitimate, the recorder shall, within 5 business days after receiving notice, record a copy of the judgment.

A decision by an administrative law judge shall not preclude a State's attorney or sheriff from proceeding with a criminal investigation or criminal charges. If a county does not have an administrative law judge that specializes in public records, one shall be appointed within 3 months after the effective date of this amendatory Act of the 98th General Assembly, or the original case shall be forwarded to the proper

circuit court with jurisdiction.

Nothing in this Section precludes a private right of action by any party with an interest in the property affected by the review and referral, or the filer of the document or documents suspected to be fraudulent. Nothing in this Section requires a person or entity who may have had a fraudulent document or encumbrance filed against his or her property to use the fraud review and referral process or administrative review created by this Section.

(h) Fees. The recorder shall retain any filing fees associated with filing a deed or instrument that is determined to be fraudulent, unlawfully altered, or intended to unlawfully cloud or transfer the title of any real property under this Section.

(i) Liability. Neither a recorder nor any of his or her employees or agents shall be subject to personal liability by reason of any error or omission in the performance of any duty under this Section, except in case of willful or wanton conduct. Neither the recorder nor any of his or her employees shall incur liability for the referral or review, or failure to refer or review, a document or instrument under this Section.

(j) Applicability. This Section applies only to filings provided to the recorder on and after the effective date of this amendatory Act of the 98th General Assembly.

(k) This Section is repealed June 1, 2018.

Section 99. Effective date. This Act takes effect upon

Public Act 098-0099

HB2832 Enrolled

LRB098 10729 OMW 41064 b

becoming law.