



Sen. Ira I. Silverstein

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09800HB2832sam002

LRB098 10729 OMW 46102 a

1 AMENDMENT TO HOUSE BILL 2832

2 AMENDMENT NO. _____. Amend House Bill 2832, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Counties Code is amended by adding Section
6 3-5010.5 as follows:

7 (55 ILCS 5/3-5010.5 new)

8 Sec. 3-5010.5. Fraud referral and review.

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

16 (b) Definitions. The terms "recording" and "filing" are

1 used interchangeably in this Section.

2 (c) Establishment and use of a fraud referral and review
3 process. A recorder who establishes a fraud referral and review
4 process under the provisions of this Section may use it to
5 review deeds and instruments and refer any of them to an
6 administrative law judge for review pursuant to subsection (g)
7 of this Section that cause the recorder to reasonably believe
8 that the filing may be fraudulent, unlawfully altered, or
9 intended to unlawfully cloud or transfer the title of any real
10 property. The recorder may enter into an intergovernmental
11 agreement with local law enforcement officials for the purposes
12 of this referral and review. A recorder may request that the
13 Secretary of the Department of Financial and Professional
14 Regulation assist in reviewing possible fraudulent filings.
15 Upon request, the Secretary, or his or her designee, shall
16 assist in identifying the validity of filings. The recorder
17 shall notify the Secretary when a document suspected to be
18 fraudulent is discovered.

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

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

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

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

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

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

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

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

25 (7) whether the documents are representing that the
26 subject of the lien is releasing itself from a lien held by

1 another entity, with no apparent cooperation or
2 authorization provided by the lienholder;

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

7 (9) whether the documents are Uniform Commercial Code
8 filings referencing birth certificates or other private
9 records that are not in compliance with Section 9-501 of
10 the Uniform Commercial Code;

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

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

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

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

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

26 (15) whether a document is not related to a valid

1 existing or potential adverse transaction, existing lien,
2 or judgment of a court of competent jurisdiction;

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

7 (17) whether the document is filed with the intent to
8 harass or defraud the person identified in the record or
9 any other person;

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

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

19 (d) Determinations. If a recorder determines, after review
20 by legal staff and counsel, that a deed or instrument that is
21 recorded in the grantor's index or the grantee's index may be
22 fraudulent, unlawfully altered, or intended to unlawfully
23 cloud or transfer the title of any real property, he or she
24 shall refer the deed or instrument to an administrative law
25 judge for review pursuant to subsection (g) of this Section.
26 The recorder shall record a Notice of Referral in the grantor's

1 index or the grantee's index identifying the document,
2 corresponding document number in question, and the date of
3 referral. The recorder shall also notify the parties set forth
4 in subsection (e) of this Section. The recorder may, at his or
5 her discretion, notify law enforcement officials regarding a
6 filing determined to be fraudulent, unlawfully altered, or
7 intended to unlawfully cloud or transfer the title of any real
8 property.

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

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

23 (g) Referral and review process. Prior to referral, the
24 recorder shall notify the last owner of record of the document
25 or documents suspected to be fraudulent. The person, entity, or
26 legal representative thereof shall confirm in writing his or

1 her belief that a document or documents are suspected to be
2 fraudulent and may request that the recorder refer the case for
3 review. Upon request, the recorder shall bring a case to its
4 county department of administrative hearings and, within 10
5 business days after receipt, an administrative law judge shall
6 schedule a hearing to occur no later than 30 days after
7 receiving the referral. The referral and case shall clearly
8 identify the person, persons, or entity believed to be the last
9 true owner of record as the petitioner. Notice of the hearing
10 shall be provided by the administrative law judge to the filer,
11 or the party represented by the filer, of the suspected
12 fraudulent document, the legal representative of the recorder
13 of deeds who referred the case, and the last owner of record,
14 as identified in the referral.

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

25 If the administrative law judge finds the document to be
26 legitimate, the recorder shall, within 5 business days after

1 receiving notice, record a copy of the judgment.

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

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

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

23 (i) Liability. Neither a recorder nor any of his or her
24 employees or agents shall be subject to personal liability by
25 reason of any error or omission in the performance of any duty
26 under this Section, except in case of willful or wanton

1 conduct. Neither the recorder nor any of his or her employees
2 shall incur liability for the referral or review, or failure to
3 refer or review, a document or instrument under this Section.

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

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

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.".