

HB3150



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3150

by Rep. Frances Ann Hurley

SYNOPSIS AS INTRODUCED:

55 ILCS 5/3-5010.5

Amends the Counties Code. Removes a repeal date of June 1, 2018 in a Section concerning a county recorder's ability to establish procedures for investigating filings that would 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. Effective immediately.

LRB100 09000 AWJ 19146 b

A BILL FOR

1 AN ACT concerning local government.

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

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

6 (55 ILCS 5/3-5010.5)

7 (Section scheduled to be repealed on June 1, 2018)

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
17 used interchangeably in this Section.

18 (c) Establishment and use of a fraud referral and review
19 process. A recorder who establishes a fraud referral and review
20 process under the provisions of this Section may use it to
21 review deeds and instruments and refer any of them to an
22 administrative law judge for review pursuant to subsection (g)
23 of this Section that cause the recorder to reasonably believe

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

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

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

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

1 property;

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

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

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

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

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

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

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

26 (9) whether the documents are Uniform Commercial Code

1 filings referencing birth certificates or other private
2 records that are not in compliance with Section 9-501 of
3 the Uniform Commercial Code;

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

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

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

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

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

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

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

26 (17) whether the document is filed with the intent to

1 harass or defraud the person identified in the record or
2 any other person;

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

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

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

1 property.

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

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

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

1 identify the person, persons, or entity believed to be the last
2 true owner of record as the petitioner. Notice of the hearing
3 shall be provided by the administrative law judge to the filer,
4 or the party represented by the filer, of the suspected
5 fraudulent document, the legal representative of the recorder
6 of deeds who referred the case, and the last owner of record,
7 as identified in the referral.

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

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

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

1 Assembly, or the original case shall be forwarded to the proper
2 circuit court with jurisdiction.

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

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

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

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

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

1 (Source: P.A. 98-99, eff. 7-19-13.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.