



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB2832

by Rep. Lou Lang

#### SYNOPSIS AS INTRODUCED:

55 ILCS 5/3-5010.5 new

Amends the Counties Code. Provides that a county recorder may establish a Review Index and 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. Provides the General Assembly's findings regarding property fraud and fraudulent filings. Provides for the following: (1) the filing of a notice sheet regarding a suspected fraudulent filing; (2) criteria that a recorder may rely upon to identify a filing as appropriate to be placed in the Review Index; (3) notification requirements of a recorder's determinations regarding a filing; (4) procedures for removal of a filing from the Review Index; (5) administrative review of a recorder's determination; (6) priority of filing; and (7) fees associated with filing a deed or instrument that is determined to be fraudulent. Further provides that no recorder, nor any of his or her employees or agents, shall be liable for any omission or error under this Section, nor for the failure to place a deed or instrument into the Review Index. Provides that this Section only applies to deeds or instruments filed after the effective date of this amendatory Act. Effective immediately.

LRB098 10729 OMW 41064 b

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 adding Section  
5 3-5010.5 as follows:

6 (55 ILCS 5/3-5010.5 new)

7 Sec. 3-5010.5. Purpose.

8 (a) The General Assembly finds that property fraud,  
9 including fraudulent filings intended to cloud or steal title  
10 to property by recording false or altered documents and deeds  
11 is a rapidly growing problem throughout the State. In order to  
12 combat the rise in these filings, a recorder may establish a  
13 Review Index as provided for herein.

14 (b) For purposes of this Section, "Review Index" means an  
15 index of filings identified by the recorder as having one or  
16 more of the criteria identified under subsection (c) of this  
17 Section, or other basis for suspicion, that would cause the  
18 recorder to reasonably believe that the filing may be  
19 fraudulent, unlawfully altered, or intended to unlawfully  
20 cloud or transfer the title of any real property.

21 The terms "recording" and "filing" are used  
22 interchangeably in this Section.

23 (c) Review Index. A recorder who establishes a Review Index

1 under the provisions of this Section shall index deeds and  
2 instruments that cause the recorder to reasonably believe that  
3 the filing may be fraudulent, unlawfully altered, or intended  
4 to unlawfully cloud or transfer the title of any real property.  
5 The recorder shall investigate any deed or instrument placed in  
6 the Review Index, and may enter into an intergovernmental  
7 agreement with local law enforcement officials for the purposes  
8 of this investigation.

9 Any document that is placed in the Review Index shall be  
10 posted to the recorder's website if a website exists. The  
11 document shall only be represented in the chain of title by a  
12 notice sheet that does not allow the public to see an image of  
13 the suspected fraudulent filing. The notice sheet filing shall  
14 contain text that states that it represents a document  
15 suspected to be fraudulent. The document shall be assigned a  
16 unique reference number that is tied to the Property  
17 Identification Number that shall allow the document to be  
18 viewable in the Review Index to the recorder, filer, the last  
19 owner of record, anyone deemed by the office of the recorder to  
20 be necessary for investigative or law enforcement purposes, or  
21 by submission to the recorder of a valid court subpoena or  
22 court order.

23 A recorder may rely on the any of the following criteria to  
24 identify a filing as appropriate to be placed in the Review  
25 Index including, but not limited to:

26 (1) The owner of the property or his or her designated

1 representative has reported to the recorder that another  
2 individual is attempting or has attempted to record a  
3 fraudulent deed or other instrument upon the property;

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

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

10 (4) A document asserts fines that do not exist or have  
11 no basis under current law or that require payment in gold  
12 or silver;

13 (5) Maritime Liens, or liens under the Federal Maritime  
14 Lien Act or the Preferred Ship Mortgage Act, or not  
15 authorized by the United States Coast Guard;

16 (6) Land Patents not authorized and certified by the  
17 United States Department of the Interior Bureau of Land  
18 Management;

19 (7) Documents filed by the property owner or third  
20 party, not the lien holder, that purport to release the  
21 owner from a lien;

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

25 (9) Uniform Commercial Code filings referencing birth  
26 certificates or other private records that are not in

1 compliance with Section 9-501 of the Uniform Commercial  
2 Code;

3 (10) Re-recording deeds to re-notarize or attach  
4 notary certification if prior notarization already appears  
5 unaltered on the document of record;

6 (11) Documents that assert any of the following:  
7 independence from the laws of the United States, diplomatic  
8 credentials or immunity, or non-United States citizenship;

9 (12) Claims that a bank cannot hold title after a  
10 foreclosure;

11 (13) Deeds not properly signed by the last legal owner  
12 of record or their court appointed representative or  
13 attorney-in-fact under legally drafted power of attorney;

14 (14) Recording of manipulated or altered federal or  
15 State legal or court forms that release a lien;

16 (15) A document that is not related to a valid existing  
17 or potential adverse transaction, existing lien, or  
18 judgment of a court of competent jurisdiction;

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

23 (17) A document filed with the intent to harass or  
24 defraud the person identified in the record or any other  
25 person;

26 (18) A document filed with the intent to harass or

1 defraud any member of a governmental office including, but  
2 not limited to, the recorder's office, local government  
3 offices, the State of Illinois, or the Federal government;  
4 and

5 (19) Previous court determinations, including a  
6 previous determination by a court of competent  
7 jurisdiction that a particular document is fraudulent,  
8 invalid, or bogus.

9 (d) Determinations. If a recorder determines, after review  
10 by legal staff and counsel, that the deed or instrument may be  
11 fraudulent, unlawfully altered, or intended to unlawfully  
12 cloud or transfer the title of any real property, he or she may  
13 record the deed or instrument in the Review Index and shall  
14 notify the parties set forth in subsection (e) of this Section.  
15 A recorder shall have the discretion to not record the deed or  
16 instrument if the last owner of record is not aware of the  
17 filing or states the filing to be fraudulent or unlawful. A  
18 recorder may, at his or her discretion, notify law enforcement  
19 officials regarding a filing determined to be fraudulent,  
20 unlawfully altered, or intended to unlawfully cloud or transfer  
21 the title of any real property.

22 If a recorder determines, after review, that the deed or  
23 instrument is not fraudulent, unlawfully altered, or intended  
24 to unlawfully cloud or transfer the title of any real property,  
25 he or she shall move the document or instrument to its proper  
26 place in the chain of title and remove any notice sheet

1 document suggesting that it may be fraudulent.

2 (e) Notice. The recorder shall provide notice to the last  
3 owner of record by telephone, if available, and certified mail  
4 when: (1) a deed or instrument has been placed in the Review  
5 Index and is under investigation; and (2) a final determination  
6 has been made regarding the deed or instrument.

7 The recorder shall advise the filer of any deed or  
8 instrument of ways to prove the legitimacy of the deed or  
9 instrument and procedures for removal of the deed or instrument  
10 from the Review Index under this Section. This advice shall not  
11 be construed as legal advice and shall be limited to directing  
12 the filer to the proper venue for a hearing and providing any  
13 other information regarding the process that the filer must  
14 take. The recorder shall provide notice to the filer of the  
15 deed or instrument by telephone, if available, and certified  
16 mail when: (1) a deed or instrument has been placed in the  
17 Review Index and is under investigation; and (2) a final  
18 determination has been made regarding the deed or instrument.

19 (f) Removal from Review Index. A deed or instrument may be  
20 removed from the Review Index if: the recorder determines,  
21 after investigation, that the deed or instrument is not  
22 fraudulent, unlawfully altered, or intended to unlawfully  
23 cloud or transfer the title of any real property; the last  
24 owner of record and the filer both appear at the recorder's  
25 office, sign an affidavit, and provide proper identification;  
26 or a court order is presented that orders the removal of the

1 document from the Review Index.

2 (g) Administrative Review. The recorder's decision that a  
3 deed or instrument is fraudulent, unlawfully altered, or  
4 intended to unlawfully cloud or transfer the title of any real  
5 property under this Section is a final administrative decision  
6 that is subject to review by the circuit court of the county  
7 where the real property is located under the Administrative  
8 Review Law. Review by the circuit court shall be de novo.

9 Within 15 business days of a determination by the recorder  
10 that a deed or instrument is fraudulent, unlawfully altered, or  
11 intended to unlawfully cloud or transfer the title of any real  
12 property, the recorder shall bring a case to its county  
13 department of administrative hearings and, within 10 business  
14 days of receipt, an administrative law judge must schedule a  
15 hearing to occur no later than 30 days after receiving the  
16 filing. Notice of the hearing must be provided by the  
17 administrative law judge (ALJ) to the filer, or the party  
18 represented by the filer, of the suspected fraudulent document,  
19 the legal representative of the recorded or deeds who filed the  
20 case, and the last owner of record.

21 If a preponderance of the evidence shows the document in  
22 question to be fraudulent, the ALJ shall rule the document to  
23 be fraudulent and forward the judgment to all the parties under  
24 this subsection. Upon receiving notice of the judgment of  
25 fraud, the recorder must, within 5 business days, record a new  
26 document before the notice sheet reference provided in



1 subsection (c) of this Section that shall clearly state that  
2 the document in question has been found to be fraudulent and  
3 must not be considered to affect the chain of title of the  
4 property in any way.

5 If the ALJ finds the document to be legitimate, the  
6 recorder must, within 5 business days of receiving notice,  
7 remove the notice sheet reference provided in subsection (c) of  
8 this Section and replace it with the original document.

9 A decision by an ALJ shall not preclude a State's attorney  
10 or sheriff from proceeding with a criminal investigation or  
11 criminal charges. If a county does not have an ALJ that  
12 specializes in public records, one must be appointed within 3  
13 months of the effective date of this amendatory Act of the 98th  
14 General Assembly, or the original case must be forwarded to the  
15 proper circuit court with jurisdiction.

16 (h) Priority of filing. When a document is moved to the  
17 Review Index, a notice sheet document shall be filed in its  
18 place that references the original filing and its location in  
19 the Review Index. The notice sheet document shall not provide  
20 an image or duplication of the document in the Review Index. If  
21 a document is moved from the Review Index back to the Property  
22 Index after a finding that the document is legitimate, the  
23 original document shall retain its priority of filing ahead of  
24 any documents that may have been filed after it.

25 (i) Fees. The recorder shall retain any filing fees  
26 associated with filing a deed or instrument that is determined

1 to be fraudulent, unlawfully altered, or intended to unlawfully  
2 cloud or transfer the title of any real property under this  
3 Section and use these monies to support the cost of the  
4 development and implementation of the Review Index.

5 (j) Liability. No recorder, nor any of his employees or  
6 agents, shall be subject to personal liability by reason of any  
7 error or omission in the performance of any duty under this  
8 Section, except in case of wilful or wanton conduct. Neither  
9 the recorder nor any of his or her employees shall incur  
10 liability for the review of, or failure to review, a document  
11 or instrument under this Section or for the refusal to accept a  
12 record for filing in the lawful performance of the duties of  
13 the recorder or employee.

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

17 Section 99. Effective date. This Act takes effect upon  
18 becoming law.