

**Ordinance of the County Board
Of
Kankakee County, Illinois**

RE: ORDINANCE AUTHORIZING THE RECORDER'S FRAUD REFERRAL AND REVIEW PROCESS AND ESTABLISHING FINES FOR THE UNLAWFUL CLOUDING OF TITLE

WHEREAS, the County of Kankakee, acting through its County Board, finds that property fraud, including fraudulent filings intended to cloud or fraudulently transfer title to real property by recording false or altered documents and deeds in the offices of County Recorders, is a rapidly growing problem throughout the State of Illinois; and,

WHEREAS, in order to combat the increases in the number of these fraudulent filings, the Illinois General Assembly in 55 ILCS 5/3-5010.5 authorized the County Recorder to protect owners of real property from fraudulent filings by establishing a process to review and refer to the circuit courts documents suspected to be fraudulent; and,

WHEREAS, the County of Kankakee, acting through its County Board, has determined the protection of the public and the protection of the real properties within the County through such a Review and Refer Process are in the best interests of the citizens of the County; and,

WHEREAS, the County of Kankakee, acting through its County Board, has determined the protection of the public and the protection of the real properties within the County through the imposition of fines for the offenses of unlawful clouding of title and filing of a fraudulent judgment or lien are in the best interest of the citizens of the County; and,

WHEREAS, at the Criminal Justice Committee Meeting on February 15th, 2017, after review, discussion and consideration, the committee recommended the below ordinance; and,

WHEREAS, at the Community Services Committee Meeting on February 21st, 2017, after review, discussion and consideration, the committee recommended the below ordinance,

THEREFORE BE IT RESOLVED, that the County Board of Kankakee County adopts the below ordinance on the Recorder's Fraud Referral and Review Process and such ordinance shall be found under Chapter 42 in a newly created Article IV "Recorders' Fraud Referral" and shall read:

Section 42-76 – Fraud Referral and Review Process

A. Definitions. The terms “recording” and “filing” are used interchangeably in this Section.

B. Establishment and Use of a Fraud Referral and Review Process. The County Recorder is authorized to establish a fraud referral and review process under the provisions of this Section and may use it to review deeds and instruments and refer any of them to the circuit court for review pursuant to subsection E of this Section that cause the Recorder to reasonably believe that the filings 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, subject to the approval of the county board, with local law enforcement officials for the purposes of this referral and review. The Recorder may request that the Illinois Secretary of the Department of Financial and Professional Regulation assist in reviewing possible fraudulent filings. The Recorder shall notify the Secretary when a document suspected to be fraudulent is discovered.

In determining whether to refer a document to the circuit court for review, the 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 copycat 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 lien holder;
- (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 Code;
- (10) whether the documents are re-recording deeds to re-notarize or attach notary certification of 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 or 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 agriculture 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 of 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 of fraudulent, invalid, or forged.

C. Determinations. If the 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 refer the deed or instrument to the circuit court for review pursuant to subsection E 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 D 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.

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

E. 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 and may request that the Recorder refer the case for review. Upon request, the Recorder shall bring a case to the circuit court by filing a petition for review therein. The petition shall 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 Recorder to the filer, or the party represented by the filer, of the suspected fraudulent document, and the last owner or record, as identified in the referral.

If clear and convincing evidence shows the document in question to be fraudulent, the circuit court shall rule the document to be fraudulent and the Recorder shall forward the judgment to all parties identified in this subsection. Upon receiving notice of the judgment of fraud, the Recorder shall, within 5 (five) 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 circuit court finds the document to be legitimate, the Recorder shall, within 5 (five) business days after receiving notice, record a copy of the judgment.

A decision by the circuit court shall not preclude the State's Attorney or the Sheriff from proceeding with a criminal investigation or criminal charges.

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 created by this Section.

F. 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.

G. Any person found to have filed a fraudulent document in violation of this Section shall be ordered to pay all of the costs and fees incurred by the County in prosecuting the

referral case, which shall include but not be limited to the costs associated with the circuit court proceeding, including attorney fees.

H. Applicability. This Section applies only to filings provided to the Recorder on and after the effective date of the ordinance creating this Section.

Section 42-77 – Clouding of Title

A. Unlawful Clouding of Title. Any person who intentionally records or files or causes to be recorded or filed any document in the Office of the County Recorder that is a cloud on the title of land in Kankakee County, knowing that the theory upon which the purported cloud on title is based is not recognized as a legitimate legal theory by the Courts of the United States, the State of Illinois, or any County within the State of Illinois, commits the offense of unlawful clouding of title.

B. Unlawful filing of a Fraudulent Lien, Judgment or Encumbrance Against Individuals and Organizations. Any person who knowingly or intentionally records or files or causes to be recorded or filed with the Office of the County Recorder any document which alleges to be a judgment, lien or encumbrances against a person or organization, not attached to real property, knowing that the theory upon which the purported lien, judgment or encumbrance is based is not recognized as a legitimate legal theory by the Courts of the United States, the State of Illinois, or any County within the State of Illinois, commits the offense of filing a fraudulent lien or judgment.

C. Fines. Any person who commits the offense of unlawful clouding of title or the offense of filing of fraudulent judgment, lien or encumbrances shall be fined \$300 for the first offense. Any person who commits such an offense a second time shall be fined \$500 for each offense. Any person who commits such an offense a third or subsequent time shall be fined \$1,000 for each offense.

In addition to any fine imposed hereunder the offender shall be ordered to pay all of the costs and fees incurred by the County in prosecuting the offense, which shall include but not be limited to the costs associated with any court proceeding, including reasonable attorney fees.

D. Exemption. This Section does not apply to any attorney licensed to practice law in the State of Illinois who, in good faith, files a lien on behalf of his or her client and who, in good faith, believes that the validity of the lien is supported by law or by good faith argument for an extension, modification, or reversal of existing law relating to the validity of the lien.

E. Definitions.

(1) For purposes of this Section, the term “cloud on title” or “cloud on the title” means an outstanding claim or encumbrance that, if valid, would affect or impair the title


of the owner of an estate in land and on its face has that effect, but can be shown by extrinsic proof to be invalid or inapplicable to that estate.

(2) For the purposes of this Section, the term “a judgment, lien or encumbrance” means a document setting out a false claim of indebtedness or encumbrance which even is valid would not create a cloud on the title of real property; but is likely to impair the subject of the document in the subject’s exercise of commerce, and can be shown by extrinsic proof to be invalid or inapplicable to the subject.

Section 42-78 – Notice Requirement

The Recorder shall provide public notice 90 days before the establishment of the fraud referral and review process authorized under this ordinance. 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.

PASSED and approved this 14th day of March, 2017.



Andrew H. Wheeler, County Board
Chairman

ATTEST:



Bruce Clark, County Clerk